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International Court of Justice

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Official Transcript of the International Military Tribunal in the matter of the United States of America, the French Republic, the United Kingdom of Great Britain and Northern Ireland, and the Union of Soviet Socialist Republics against Hermann Wilhelm Goering et al, Defendants, sitting at Nurnberg, Germany, on 4 June 1946, 1000-1700, Lord Justice Lawrence presiding.

ALFRED JODL -- Resumed

DIRECT EXAMINATION -- Continued

BY DR. EXNER:

Q Yesterday afternoon we started to deal with crimes against war. Can you hear me? And I should like to put a few preliminary questions to you. What position and what tasks were yours during the time of the war?

A I had to deal with the entire Chief of Staff work for the strategic operational conduct of the war. Then, subordinate to me, was the Military Propaganda Division, and this division had the duty of cooperating with the press. And my third task was that I was the head of an office which, on a broad scope, had to distribute reports and information to the various branches of the Wehrmacht, the various branches of the armed forces. And this entire sphere of tasks took up my time to such an extent that night after night I worked until three o'clock in the morning. And that was the order of the day, every day. To concern myself with other things I had no time to do that at all. My collaboration with the press, the press which had to be advised daily, that task I had to delegate to my personal General Staff officer.

Q These tasks which you have just enumerated were all tasks connected with your work and with your office, and that was in connection with the Wehrmacht operational staff, whose chief you were?

A Yes.

Q And a branch of the operational staff, the most important department, was the operational department, and that was your influence. The Prosecution is calling you the Staff Chief of the Field Marshal Keitel. What can you say in that regard?

A That is not correct, and has already been shown through the organization which was presented when Field Marshal Keitel's case was dealt with. There is a great difference as a chief of staff if I had been an auxiliary of

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Keitel's and of his duties, but on the other hand I was only the chief of one of the many offices or agencies which were subordinated to the Field Marshal. Beginning with the year 1941 it was the custom or had become the custom, rather, that I, together with my operational departments, would report to the Fuehrer direct all matters concerning operations. Whereas, Field Marshal Keitel in availing himself of my Quartermaster Division and using this division as a sort of personal working staff, took over all other tasks.

Q As chief of the Wehrmacht Operational Staff did you have the authority to issue commands?

A No. Or to say it more explicitly, only about my working staff. I was subordinate to Field Marshal Keitel, but even Keitel himself was not a "Befehlshaber," one who could give commands, he was only the chief of a staff. But of course during this war I decided many operational details, and signed them as well. There was never any conflict of any sort about these matters, conflict with my commanders in chief, for I had their confidence and worked on the very best possible understanding with them.

Q For an outsider it is not quite simple to understand that even though you had no authority to issue commands and orders, there are many orders available here which are signed by you, and signed in many ways, sometimes with the entire signature, sometimes with the initial "J", the beginning letter of your name. Can you explain these various signatures and ways of signatures?

A One has to discriminate. The decrees which the Fuehrer himself signed, if they were of an operational nature, then with these orders, at the end and the lower right, there is my initial. And that means that I was active in the formulation of this order. Then there were orders which also originated from the Fuehrer but they were not signed by the Fuehrer personally but on the order of Jodl. But thenif that was the case they always carried the opening sentence: "The Fuehrer has decreed" or the sentence was found somewhere in the course of the order. And there was a preamble to this order, usually reasons for the order, and then: "The Fuehrer therefore decrees."

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Q And what was the difference between these two groups of orders? Why was one group of orders signed by the Fuehrer actually, and the other not signed by the Fuehrer, but rather by you alone?

A The difference was solely that the orders signed by me were of less significance.

Q Now, there were other orders which did not open with "the Fuehrer has decreed", but they were signed by you, nevertheless. How about these?

A In these orders, the signature said "The Chief of the Supreme Command of the Wehrmacht, by Order of Jodl". These were orders which emanate fromme. By that I mean that I formulated these orders, or my staff did. The Fuehrer himself and Field Marshal Keitel perhaps might have been informed of these orders, but not in every case.

Then there were other orders, still, where on the first page in the upper right hand corner there is my initial. These were orders given out by other offices. My initial "J" on the first page meant solely and alone that it was an office notice, to show that this decree, or order, had been submitted to me. But it was not a proof of the fact that I had read it; for, if on examining the first page, I saw that this decree dealt with a matter which did not touch my sphere of work, then I initialed the order and put it aside, because, after all, I had to save time.

Q Now, there is another volume of documents, or group of documents, which are being held against you, which are not actually orders but rather report notices. Can you comment on that, please?

A These report notices were an arrangement used on the higher staff level and applied to people who did not have time to go through enormous volumes and files. Therefore, a report notice contained in a very brief form the picture of any certain incident or occurrence, frequently the attitude taken by other offices; and sometimes it contained a proposal as well. But the decisive factor was the fact that it was not an order, it was not a draft for an order, but rather it served as a basis for an order, and supplied the data.

Q Perhaps the situation will be clarified if you will return to the report notice dealing with the commissars which we dealt withyesterday. You set this as a case in point. This is 884 PS, Exhibit R-351. We touched on

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this matter yesterday, already. It is Volume 2 of my document book, Page 152.

Before you start, I should like to call the attention of the High Tribunal to an error in translation. On Page 152, under I, it says, "OKH presents a statement for the instruction of directives regarding the treatment of commissars has been submitted."

In the English translation, it says, "The Army High Command presents a statement"; and it obviously should be "presents a draft for a statement", for it was a draft. I cannot quite follow all the French, but it should be "Projet" instead of "Confirmation".

The German original says, "OKH (the Army High Command) presents a draft for a statement of the instructions concerning the high military functionaries and in the instructions which were issued on the 31st of March, 1941, this deals with the Commissars".

This is a report notice. Please tell us what the significance is.

A This document is a typical example. First of all, it contains a draft by another office of the Army High Command, the OKH, not word for word, but rather in a brief, abbreviated, form. Then under Figure II, on Page 153, the attitude and opinion of Reichsleiter Rosenberg is set forth. Then further it contains a proposal of my staff itself, under Figure III.

The entire matter, therefore, is not an order, but far from it; rather i was to become an order. And as far as this report note is concerned, I made many, many marginal annotations. A few words were to serve for the further treatment and for the discussion, or the carrying out, of the entire procedure. Therefore, you cannot apply the same criteria that you could apply to the well thought out words which are contained in the actual order itself.

Q All right. That takes care of the report note and your remarks on that subject. Now, let us turn to the very difficult topic of Commando Order. This matter has been dealt with by the Court on various occasions, and it is really going beyond the matters at hand in this court.

I should like to know something from you about the antecedents of this order. We have already seen that this Order 498 PS, U.S.A. 150. I did not include this order in my document book, but I asked the General Secretary to have this order put at the disposal of the High Tribunal in the various languages. I am not sure whether it has been done, but I certainly hope so.

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Then a supplementary decree was added to this original. This is PS 503, U.S.A. Exhibit 542.

MR. ROBERTS: It is 498 PS. It is in the Keitel and Jodl Document Book No. 7, Page 64.

BY DR. EXNER:

Q It is a clarification addressed to the commanders-in-chief. I repeat, the first order was addressed to the troops, and the second, the supplementary order, was addressed to the commanders-in-chief. The first decree is addressed to foreign soldiers and threatens them with destruction in the event of bandit-like activity; and it refers to a Wehrmacht report.

Can you please tellus first, what is the connection between the Commando Order and the Wehrmacht report of 7-10-42?

A I shall ask of the High Tribunal that in this case as an exception I may enlarge upon this matter in greater detail. Very much is at stake in this order, not from my own standpoint, not with respect to one person, for one person actually plays no part in this very important law proceeding here. Here we are concerned with the honor of the German soldiers and of the German officers, this honor which I am representing here in my person.

The Commando Order, together with a supplementary order, appears on the 7th of October, 1942, in the Wehrmacht report. The two orders are very closely connected; for this Commando Order was the executive order for this announcement in the Wehrmacht report.

Q. And who gave this announcement in the Wehrmacht report? Who compiled it, who is responsible for it?

A. This Wehrmacht report of the 7th of October, which is really a supplementary order, in the main emanated from me. It deals with the refutation of a report by the English Ministry of War, a matter upon which I do not wish to dwell for it is a rather difficult and delivate point and the prosecution does not wish me to touch on it.

Q. And how about this supplementary order --

THE PRESIDENT: Dr. Exner, we don't know -- at least I haven't seen the document of the 7th of October, 1942, and the prosecution has made no objection to any answer to any English documents as far as we know.

DR. EXNER: I wished to present this document, to submit it rather, but it was objected to.

THE PRESIDENT: What does the defendant mean by saying that the prosecution does not wish him to present it or to answer it?

DR. EXNER: That means, most probably, that this Wehrmacht report was not to be submitted, but perhaps the defendant can give us the contents of this report briefly.

THE PRESIDENT: Well, it may be a question of translation, but if he means simply that no evidence has been given by the prosecution on the subject, of course there is no objection to his saying that; but when he says that the prosecution does not want him to put forward or does not want him to answer the document, that is a most improper statement to make.

DR. EXNER: Yes, Mr. President.

BY DR. EXNER:

Q. Perhaps you can tell us briefly what the contents of this Wehrmacht report is, this Wehrmacht report started on the 7th of October. I believe you will find this report in your own document book.

THE PRESIDENT: Dr. Exner, that is not quite what I mean. What the defendant has said was that the prosecution does not want him to deal with this subject;

DR. EXNER: Yes.

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THE PRESIDENT: Now, if that is the remark that is made, that is an improper remark to make. The prosecution have got no communication with the defense upon this subject, presumably, except that they have put forward in evidence in this case.

BY DR. EXNER:

Q. Did you follow him? You are not to assert that you can not touch upon this subject. Can you perhaps give us an explanation of what you really meant?

A. It is in direct connection with this Commando Order, and the last paragraph of the Wehrmacht report is really important, something which was compiled by the Fuehrer himself, as Field Marshal Keitel has testified already, and which Professor Jahrreis read before the High Tribunal here. That is the sentence which reads: "In the future all terror and sabotage troops of the British, and their assistants and helpers who do not act like soldiers but rather like bandits, will be considered as such by the German troops and treated accordingly, and wherever they appear they will be ruthlessly eliminated in battle." This supplement originated, word for word, with the Fuehrer personally

Q. And now it was demanded of you --

THE PRESIDENT: Wait a minute, Dr. Exner. Wait a minute.

Defendant, what the Tribunal wants to know is this: You said that the Commando Order appeared originally in a Wehrmacht report of the 7th of October, 1942, which, in the main, emanated from you, and that that report refuted an English statement by the Ministry of War which the prosecution did not want you to deal with. What do you mean by that?

THE WITNESS: By that I meant that my defense had the intention of using the entire Wehrmacht report of the 7th of October, and submitting it as evidence, but my defense dispensed with that when the prosecution objected to this document.

SIR DAVID MAXWELL-FYFE: My Lord, I have certainly never objected to this document. I have asked Mr. Roberts and he tells me that he has never objected to it, and, as far as we know, no one on behalf of the prosecution has ever objected to it. I certainly have no objection to it at all myself; as a member of the English government at the time when this matter was issued, I have never

heard anything about it before, but I have no objection to it at all.

DR. EXNER: May I just make one remark, please.

THE PRESIDENT: Yes.

DR. EXNER: In case there should be an error, it is all the more pleasing to us and we shall submit this Wehrmacht report either this morning or this afternoon. I should like to clarify one more point regarding the question which Mr. President put to the Defendant. The Defendant said that the Wehrmacht report, in the main, originated from him. The supplement originated with the Fuehrer and the --

THE PRESIDENT: Dr. Exner, if you want to correct anything that I have said you must do it through the witness and not through yourself. You are not entitled to give evidence. You only give evidence through the witness.

DR. EXNER:: Yes. Very well.

BY DR. EXNER:

Q. Please declare once more and tell us which part came from you and which part came from the Fuehrer and what the contents of the Fuehrer's supplement was.

A. The entire first part of this Wehrmacht report has nothing whatever to do with Commando troops but, rather, it concerns itself with the famous affair of the shackling of German prisoners of war at the beach of Dieppe. I shall refer to this point once more later.

THE PRESIDENT: Then you were correct in saying that in the main it emanated from you?

THE WITNESS: Yes. The first part of this Wehrmacht report, that I formulated, and it contains the refutation of a British radio report given out by the British Ministry of War. This statement which the British War Ministry made was wrong, and the reason it was wrong, that I gathered together and established on the basis of records which we had, photographs which we had, and affidavits which we had. As far as Commandos are concerned and reprisals, this matter was then not all concerned with reprisals. This was brought into this Wehrmacht report through the supplement by the Fuehrer, which begins with the sentence: "The High Command of the Wehrmacht, therefore, considers itself forced to decree the following."

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BY DR. EXNER:

Q. It was considered necessary now to have this announcement made known in an Execution Order. Did the Fuehrer demand drafts of an executional order? Did he demand that from you?

A. After the Fuehrer had written this last supplement, he turned to Field Marshal Keitel and to me and demanded an Executional Order, Ausfuehrungsbefehl, in conjunction with this general announcement as found in the Wehrmacht report, and simultaneously he set up the slogan that he did not want any military courts.

Q. Did you make this draft?

A. I had many, many doubts, and when I thought over the Hague warfare rules these doubts could not be overcome. Neither Field Marshal Keitel nor myself compiled any such draft, but my staff, on their own initiative, asked for drafts and asked for opinions from various officers, and in that manner Document PS-1263 came into being, a document which I shall deal with later.

THE PRESIDENT: That is Document 1263-PS?

DR. EXNER: 1263-PS, Page 104 of Volume II of my document book; 1263-RF, "R", Richard, "F", Frank, but we shall deal with that later.

THE PRESIDENT: Did you say Page 204.

DR. EXNER: Page 104, Volume II.

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BY DR. EXNER:

Q Please continue.

A My wish was an entirely different one. My intention was to avoid the issuance of an order or decree altogether. I expected really that on the announcement in the Wehrmacht report, an announcement which certainly was not kept secret, but which was broadcast very freely over the air to the entire world, that the British Minister of War, either directly or via Geneva, would approach us again, as had been done previously on several occasions. And I hoped that in this way the entire matter would be transferres to the sphere of influence of the Foreign Office. However, this did not occur. The British War Ministry remained silent.

In the meantime, ten days had passed and nothing had happened. Then, on the 17th of October, General Schumundt, the Chief Adjutant to the Fuehrer, came to me and said, "The Fuehrer is demanding an executional order." And I gave him the following answer, word for word: "Please give him my best regards, but I certainly will not give out an order like that."

Schmundt laughed and said, "Well, of course, I can't tell him that," And my re reply was, "Very well, then, tell the Fuehrer that I do not know how a decree like that could be justified under international law."

And with that, he left. I hoped that I would be asked to come to the Fuehrer so that at long last after many months I should be able to speak to him personal

Q And this coincided with the Vinizza crisis?

A Yes. And also I wanted the opportunity of telling him about my misgivin and doubts -- either that or be thrown out of his presence. Either eventuality would have helped me. But neither of these things actually did happen.

After a few minutes Schmundt called me on the telephone and informed me that the Fuehrer was going to set up these decress himself.

On the 18th of October Schumdt came to me and brought with him personally these two orders of the Fuehrer -- the order to the troops, and the reason for this order, directed to the commanders.

BY THE PRESIDENT:

Q Are you referring to two documents which are before us?

A These are the two documents, 498-PS and 503-Ps. The papers submitted to the High Tribunal as documents are not the originals of the Fuehrer; the originals handed over at Flensburg myself. The documents which are in the hands of the

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Tribunal are copies of the originals, or a mimeographed version by my staff.

BY DR. EXNER:

Q Now, I should like to interpolate a question. You mentioned that your staf. worked on something and you referred to PS-1263, which has been submitted to th High Tribunal page 104 of Volume 2. On the basis of this document, at page 106. you made two remarks. The first item is on page 206, where it says,"no" In the French translation this "no" is lacking, and I am asking you to make that correction, please. On the same page, a little further down, in your own handwriti: it says, "that doesn't go either," and there is your initial "J" standing for Jodl. Please explain what you are referring to here.

A As I have already told the High Tribunal, my staff, as may be seen on page 104 -- under the first figure -- of themselves asked for proposals. And they asked for proposals from the Amt Ausland Abwehr (Counter Intelligence), for under its jurisdiction the International Law group was centered; and point 2, the Wehrmachts Recht Abeilung (the Wehrmacht Legal Department), which is significant, for after all it was a legal problem that we were concerned with.

On page 106 the High Tribunal will find that proposal which the Amt Ausland Absehr (Counter Intelligence) made. And the Ausland Division the foreign divisi of this office, made this proposal. Under paragraph A the proposal was made by this division: "Members of terroristic and sabotage troops who are found without uniform, that is civilian clothing, or found in other uniforms, and are apprehended, are to be treated as bandits, or if they are apprehended outside combat operations, they are to be interrogated briefly by an officer and then afterward they are to be court-martialed." It was quite impossible, for if you find a soldier in civilian clothing, that is, without his uniform, then no one could ever know just with whom they were concerned. It might be a spy; it could be a prisoner of war who had escaped; it could be a hostile aviator who had saved his lif by jumping from his plane and now wanted to conceal himself in civilian clothing All of this had to be determined by an experienced interrogating officer and through a court-martial consisting of a lieutenant and two non-commissioned officers or soldiers. In paragraph B --

Q And for that reason you said no?

A That was the reason I put "no" next to that paragraph.

In paragraph it was suggested that if sabotage groups were apprehended wearing

uniforms, that was to be reported to the Wehrmacht operational staff and the staff was then to decide what was to be done, and in that way the Wehrmacht Fuehrungs Stab -- the operational staff -- was to have the function of a military Tribunal, which it could never actually be. As far as I am concerned, on the basis of my wide experience, I have pondered these problems more than some of my subordinates and I have to lay claim to that wider experience.

Q Therefore, you rejected this proposal, in addition to having grave misgings about the Fuehrer decreem which you have just said, Now, tell us what objections, what doubts, you actually did have?

A First of all, I had a series of legal doubts. Then this decree was ambiguous and not clear enough for execution in practice. In this case -- especially in this case -- I considered military Tribunals or courts-martial as absolutely necessary. I know full well that courts, either consciously or not, may on occasion be under coercion and may judge not only according to the right, but there is the possibility of a miscarriage of justice.

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Q. Therefore, you wanted to instal a legal or tribunal procedure. What did you mean when you said that the report was ambiguous and unclear?

A. The thought was this: Soldiers who, by their actions, put themselves beyond the law of war can not claim to be treated according to the law of war. This is a basic principle, as shown in international law, for instance, when we would deal with the concept of a spy or Franc Tireur.

Through this order, a certain intimidation was to be applied against certain methods of warfare used by the British commando troops, but the order of the Fuehrer went further than that, and it said that all commando troops had to be eliminated. This was the point which cause me grave trouble.

Q. What legal doubts did you have?

A. I had this doubt -- that on the basis of this order, soldiers would be mowed down.

THE PRESIDENT: Defendant, it is not necessary to speak so slowly, if you can speak a little bit more fast.

A. I was concerned that not only hostile soldiers would be mowed down, and, to use the Fuehrer's expression, soldiers who actually had acted like bandits, but that decent soldiers as well would be mowed down.

My second consideration was--and I was especially averse to this--that in the very last supplement in document 503-PS, it was ordered that soldiers were to be shot after they had been captured and interrogated. The thing that was totally mysterious to me was the general question or situation in law, whether a soldier who had previously acted like a bandit, upon being captured and brought into the legal situation of prisoners of war, whether he would actually enter this legal sphere, or whether, because of his prior actions, he had already placed himself beyond the pale of the law and of justice.

Q. By that you mean the Geneva Conventions.

A. Yes, I mean the Geneva Conventions.

Q. Hostile fighters who had acted in an unsoldierly manner were not

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to be treated as soldiers, was that, per se, something that you could understand?

A. Yes, I could quite understand that, and I was not the only one who understood it. The Fuehrer had received very bitter reports. We had captured all the orders that were with the Canadian landings brgiade at Dieppe and these orders were before ,e in the original. In these orders it was set down that wherever possible, German prisoners were to have their hands shackled. After some time, through the Commander in Chief, West--

Q. You can speak faster.

A. --I received witnesses' testimony and court records. All of this was documented by photographs, and these things showed to me, anyway, unambiguously and unequivocally, that numerous people who belonged to the organization Todt --fathers of families, unarmed old people, but people who carried an arm band with a swastika that was part of their insignia -- that these people had been shackled so that there was a loop around their necks and the end of the rope was fastened around their thigs in such a way that they had strangled themselves.

In this connection I should like to say that the photographs and incidents, which to me seemed to be facts, I kept from the Fuehrer. I concealed these matters from the German people, and therefore I concealed these matters from the Propaganda Ministry as well.

Then through the radio we had the English report, which said: "It is emphatically denied that any soldiers had been shackled."

After some time, there was an attack by a commando troop on the island of Sercq. Again we received reports, which had been sworn to, that soldiers had been shackled, and they had been German prisoners.

Finally, we captured the so-called British order for close combat. That was the decisive factor with the Fuehrer. I studied this report very, very carefully as well. In this report it was shown through pictures how people could be shackled so that they will kill themselves through this method of shackling, and it was set down in exactly what period of time death would result.

Q. Therefore, the reasons which Hitler gave for his order, decree 498, actually were based on facts. Hitler was referring to prisoners

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who had been shackled, prisoners who had been killed, and--

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THE PRESIDENT: You are paraphasing the evidence in a way that is inaccurate, because the defendant has just said that he kept these things from Hitler. You are now saying that Hitler knew about them. That is not what the witness said.

BY DR. EXNER:

Q Then, I shall have to ask you whether the facts upon which this decree is based were known to you, whether they had been reported to you.

A I believe that the High Tribunal has document PS-498. The first thing that is mentioned by the Fuehrer in that document is that is is saying generally, for quite some time our opponents in their conduct of war have used methods which are beyond the international Geneva Agreements, and I had to see that the reports which we had regrettably been receiving since the summer of 1941 were true.

I do not wish to refer to these cases in detail. There was a rather fantastic incident of a British U-boat. There was the order in North Africa that German prisoners of war were not to have any water before they were interrogated.

THE PRESIDENT: Defendant, the Tribunal thinks that it is very difficult to go into individual incidents which occurred long before this order was drafted, and you have told us what you said the order was drafted in respect of, namely, the shackling, and you are now referring to other things which you allege happened long before that. It does not seem that it is possible for the Tribunal to investigate all those matters which happened long before.

THE WITNESS: Then I shall not deal with this matter any longer, but I feel that I have to prove that in general the reasons given by the Fuehrer for this order not only sprang from a diseased imagination, but that he had actual proof and real proof and we did as well, for there is a decisive difference whether I, in my own mind, saw certain justifications for this order and had to concede this or whether I considered this entire order an open scandal, and that is a point that is very important for my own behavior, but I shall try to be very brief. People who had been punished repeatedly as criminals were active as commandos, and to prove this, testimony of prisoners is available, and that prisoners had been shackled, and we had

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captured reports --

THE PRESIDENT: You have told us that already. We have heard that more than once--that you had evidence before you that prisoners were shackled and that you had the Canadian orders before you.

BY DR. EXNER:

Q Perhaps you can just say one word about killing.

A In conclusion, I should like to say that I did not see any order, any captured order, according to which it was decreed to kill German prisoners of war. This was one of the reasons contained in the Fuehrer decree, the killing of prisoners, but I should like to explain that the English Ministry of War had advised us--I can not recall exactly whether it was via Geneva or via th radio--that it might very well be that cases would arise in which prisoners of war would have to be killed--no, rather, in which prisonersof war would have to be shackled, for otherwise one would be forced to kill them instead. Then, if in conclusion, the Fuehrer says that, we have found orders that prisoners as a basic principle are to be killed through commandos, then, in my opinion, he was referring to the English close combat regulations, in which shcklings were prescribed which had to bring about death.

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Q And what was your own participation in this commando order?

A My own personal participation consisted only of having this decree distributed.

Q The Prosecution verbally asserted that you signed one of these orders, although I don't know which of them. That is not correct, is it?

A No, I signed the order to have this one order kept a secret.

Q We'll deal with that right away. Could you have refused to transmit this order?

A No, if I had refused to transmit an order of the Fuehrer I would have been arrested immediately, and in this case I must say it would have been justified. But I was not at all sure whether this decree, either in its entirety or in part, was actually against the law, and I still don't know that today. I am convinced that if one were to call together a council of international law experts here, probably each one of them would have a different opinion on the subject.

Q Colonel General, you can speak a little faster.

Could you have made counter-proposals?

A At another time probably yes, but at this time, which was a time of conflict with the Fuehrer, it wasn't even possible for me to speak with the Fuehrer personally. To broach the subject during the general situation report was quite impossible. Therefore, in carrying out this order, I intended to follow a very generous practice, and I was certain that the commanders in chief, as well, would do the same.

Q And what do you mean by a generous practice? Could this order have been interpreted in different ways?

A Yes. The order really put down two methods. In order to avoid the treating of really decent soldiers as criminals, this was done: If a commando operation at night was not mowed down, but captured -- as was the rule in almost all cases -- it was almost

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certain proof that they did not consider these fighters as bandits, and the commanders in chief had to investigate that matter and check it. If it was a purely reconnaissance operation, then the entire action did not fall under the concept of the commando order and did not have to be reported as a commando action. However, if it was an actual sabotage and destruction group which was operating then it had to be checked as to how it was equipped; whether they were wearing civilian clothing underneath their uniforms; whether they were carrying the famous armhole guns so that when they started to surrender, by lifting their arms the pistols would automatically go off; or whether during the fighting, they used treacherous methods. The commanders in chief could act in accordance with the outcome of this investigation.

I believe that according to this point of view it was quite possible -- and I must say this took place in the bulk of cases -- that the shooting of brave soldiers was avoided.

Q Did you yourself have any influence on the methods followed by the troops?

A I tried to make my influence felt on various occasions When it was reported to me that a troop like that had been captured -- and according to the Fuehrer Decree they shouldn't have been captured -- then I did not object at all, and I did not ask any questions. I did not report to the Fuehrer commando enterprises or operations if they did not have any great success in sabotage.

In the final analysis, in some instances, such as the case of Percara which Field Marshal Kesselring pictured to the court, I dissuaded some people from rather drastic treatment, and succeeded in persuading the Fuehrer that it was actually only a reconnaissance unit.

Q Were many units actually shot ruthlessly in commando operations?

A Commando operations were really reduced. They were announced in the Wehrmacht Report; they were reduced considerably. I believe that there were no more than eight or ten cases in all.

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Then, for a period of time, in the Wehrmacht Report -- and now I am dealing with the months of July and August of the year 1944 -- increasingly large numbers were reported as to terrorists who had been killed. Those are not commando groups that are mean but rather they are those who fell during the combatting of thos who revolted in France. That fact is proved if the Tribunal will turn to Document USA-551, Figure $. There you will find the evidence.

MR. ROBERTS: My Lord, it is page 70 of Book 7.

THE WITNESS: Or page 117 of our document, Volume 2. Ther it is shown just what was decreed.

DR. EXNER: I should like to deal with another document nc and discuss it with the witness, Document PS-532.

THE PRESIDENT: It is time to break off.

(A recess was taken.)

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Q. With reference to the subject "commando order" I want to mention Document PS 532, RF 368, which is in our Document Book 2 on page 113. This document has already once been offered. It was the occasion for an objection on my part because the document isn't signed, or rather because it has been crossed off, would you say. Will you explain to us please why this draft order was crossed out by you?

A. There was an application from the Supreme Commander prior to this draft order. Now after the invasion that Commando order should have been rescinded or was to have been rescinded altogether. I agreed to that proposal, which meant the rescinding of that order. Referring to the immediate area slightly farther than that from the beach-head, there were daily landings by parachutists, at that time."

THE PRESIDENT: At the time of your objection was that document rejected? You told us you objected to the document, but I am asking you what did the Tribunal do upon your objection, did they maintain it or deny it?

DR. EXNER: The objection was allowed, but the document was struck off. I don't think I am wrong. I had not applied at that time to have the document struck off. I merely objected to the fact that it wasn't mentioned that the document had been crossed out, and that it had been turned down with the hand written note of Jodl on the margin which you can see.

THE PRESIDENT: Either the document was offered in evidence or it was not and either it has an exhibit number or it has not, and as I understand your objection was allowed.

MR. ROBERTS: It was objected to by Dr. Exner, after having been given the French exhibit RS 368, and after discussion it was then stricken from the record, the English short hand note reference being page 3631. My Lord, I think in fact both the Prosecution and the Defense agreed it has Jodl's writing upon it, and, therefore, I feel certain that there can be no question as to it's admissibility, either on behalf of the Prosecution or Defense. My Lord, I certainly intend, with the permission of the Tribunal, to cross examine him about it, and I haven't the slightest objection to my friend, Dr. Exner, putting it in.

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THE PRESIDENT: Very well.

DR. EXNER: It may, therefore, be left in as RS 368.

BY DR. EXNER:

Q. Will you please continue?

A. At that time there appeared to be the intention, therefore, that all of this commando order should be dropped. For that reason I wrote inside the statement under Figure 4: "The enemy should not be treated as members of the Commando", and I crossed out the entire first page. That, however, didn't help because still on that same day the Fuehrer on the basis of that application from the Supreme Commander made a different decision and opinion of what he desired, and that is contained in Document 551 RS, USA 551, that is contained in the second volume on page 115, an order regarding the treatment of commando personnel.

Q. Will you please now continue, because that order contains a hand written remark of yours saying that similar action should be taken in the Italian theatre of war? This is on page 117. Please, will you briefly explain the contents of that order and the reason for this remark?

A. That can be briefly explained. There were certain territorial limits contained in that order, regarding the use of that commando order. It means that the order was illegally carried out wherever there were enemy actions behind the lines of the corps, but not in the fighting territory of the beachheads. These were territorial limits which had not yet been established and which had not yet been ordered. I immediately included in it the Italian Theatre of War, because there was a fighting front on the land as well. If this order was used in practice in Italy then it meant that no commando action which surrounded a landing on the coast could be regarded as a commando operation because all of these landings took place before the corps operations. It was very desirable, in my opinion, therefore, to have the same conditions applied to the Italian Theatre of War.

Q. I just want to read one paragraph on page 116. It is the second paragraph under No. 1. You see it says in the first paragraph it says that the enemy soldiers in uniform are to be excepted if they are in the enemy beach head, that is to say, and this is important, this means when they are

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in the area of the divisions fighting in the front line, as well as invasion troops up to and including General Commands. With reference to paragraph 4 of the basic order, the word "corps command" means just "corps command". It hasn't been rightly translated into English and the French. This limiting of the order to certain territories in accordance with Jodl's remark was meant also to be applicable to the Italian Theatre. At the end with reference to --

THE PRESIDENT: What is it you are saying about this translation?

DR. EXNER: The word "General Kommando", general command, has been translated into the French "Region Militaire."

THE PRESIDENT: Is that in the English?

DR. EXNER: In the English it says "Corps Command" and that is correct, "Corps Command", which is the same as General Kommando.

THE PRESIDENT: Dr. Exner, the Tribunal would prefer that you should not draw attention of the Tribunal to anything which you say is a mis-translation. Rather than stating it is a matter of mis-translation I call it a question of opinion as to whether it is a mis-translation or not. It isn't for you to tell us it is a mis-translation. You may draw our attention to it. But now will you tell us this also: In one copy of this Document 551, it appears to be signed by, initialled by Warlimont. In the other variation of the translation it appears to be signed by the defendant Keitel. What is the explanation of that?

MR. ROBERTS: My Lord, might I also say that I think the Court should get the original from the Exhibit Room? No. 551 in fact, consists of three documents. The first is a draft altered in pencil, and the second is a draft initialed "W". That is Warlimont with Jodl's at the end, and the third is the final order in which the penciled note of Jodl's alteration to include Italy is also incomplete. So, there are really three documents, and the last is a mimeographed document with the mimeographed signature of Keitel.

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So there are three documents, and the last is a mimeograph, with a mimeographed signature attached. That appears from the original.

THE PRESIDENT: Go on, Dr. Exner.

BY DR. EXNER:

Q. The prosecution has been asserting that you had issued an order ordered to be kept absolutely secret and that you had ordered that it was only to be distributed down to the level of commanding officers so that it should not under any circumstances fall into enemy hands. You ordered that for the second order also, didn't you, giving reasons? Please will you tell me now why you ordered that order to be kept so very secret?

A. This secrecy order refers in fact only to the document 503.

Q. That, I want to add, is in the second volume of my document book on page 102. That is the order regarding the keeping secret, signed by Jodl. Please, will you continue now.

A. A particular secrecy for that order was quite inevitable because first of all it was only at best to commanders. Secondly, that order contained in great detail the considerable damage the armed forces, Wehrmacht forces, had suffered through those commando operations, and the damage which might under certain circumstances still be done. If that order were to fall into enemy hands, then he would form almost a temptation to continue and increase that particular type of warfare. And, thirdly, the order 498-PS could be considered as a permissable reprisal, permissive under international law; but the last sentence in the document PS-503, a sentence from which one can easily recognize that it was added later, since the order had previously been completed, that sentence I have to say disgusted me. It was one of the reasons why I ordered that particularrly great secrecy be attached to this particular order.

THE PRESIDENT: Which sentance are you referring to?

THE WITNESS: I refer to the last sentence of the document PS-503, which says if it should tuen out to be suitable that for reasons of interrogation one or two men should be saved or spared at the beginning, then they ought to be shot immediately after they have been interrogated.

THE PRESIDENT: Dr. Exner, that is not in 503, is it?

DR. EXNER: 503.

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THE PRESIDENT: You haven't printed the whole of 503 in your document book. Is that it?

DR. EXNER: Unfortunately, I haven't got 503, it is only the secrecy order of 502, but I ask particularly that it should be submitted to the Tribunal.

THE WITNESS: May I perhaps add that that sentence was altogether the source of all the trouble. The troops used that sentence not to shoot commando troops, as a rule to take them prisoners.

BY DR. EXNER:

Q. You said this last sentence disgusted you. Were you quite clearly occupying the view that it was against international law?

A. One could have certain doubts about that too, but it disgusted me from the human point of view because if you do shoot a man, then I considered it indecent to first of all squeeze him out for information.

Q. I want to come to that with one more question before we adjourn. You said that you haven't always reported everything to the Fuehrer, you haven't reported all commandos. That means that you haven't reported such matters as you had about the enemy, killing, and such. What did you mean by that?

A. The violations of international law which we thought had taken place, the shackling of German prisoners I reported to him, but one thing I did not report was the shackling of some of the men belonging to the organization TODT in such a manner that they have settled themselves. That was something I did not report, and did not appear in any order or Armed Forces bulletin.

THE PRESIDENT: The defendant has already told us about this, so why you should ask him again, I don't know.

DR. EXNER: It didn't appear to be to be quite clear.

BY DR. EXNER:

Q. We shall not pass ont to another subject, the order regarding Leningrad and Moscow. Tell me, Hitler's order regarding Leningrad and Moscow, how did that come about? It is C.123, second volume, page 145 of my document book, volume 2, my 145. It was submitted under the number USSR 114. It is the order that capitulation was not to be accepted. Will you tell me how it came about?

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A. At the beginning of the second paragraph the Tribunal will find the sentence that the moral justification for this measure is clear to the whole world. I shall now explain: The primary cause was a report from General conLeeb, the Supremem Commander of the Army Troop North, stationed before Leningrad. He reported that the population of Leningrad had already begun to press against his positions south and west. He pointed out that it would be absolutely impossible for him to keep these millions of the Leningrad population supplied with food if they were in any way to fall into his hands, because they supply situation at that time and the supplies for that Army group, were in a catastrophic condition. That, as I said, was the primary cause. But then shortly before Kiev had been abandoned by the Russian armies, and hardly had we occupied the city when there was one tremendous detonation after another. The major part of the inner town burned down. 50,000 people were without homes. German soldiers were being used to fight the flames, which brought us considerable losses, because during that fire, further tremendous amounts of detonating material went up. The local commander of Kiev was first of all under the impression that this was sabotage by the population, and, too, we found a detonating chart, and this chart contained about 50 or 60 objectives in Kiev which had been prepared to be blown up for some considerable time and which, as the investigation by engineers proved at once, was in fact correct. At least 40 more objectives were prepared to be blown up and the detonations were to be set off from outside by means of short waves. This original detonation chart came into my hands and that proved --

THE PRESIDENT: I don't think we need go into the details of Kiev. This deals with Leningrad. He might briefly state in substance what he says happened at Kiev, but we cannot investigate details of it.

DR. EXNER: Mr. President, the defendant wanted to claim that the same thing that happened in Kiev was feared for Leningrad.

THE PRESIDENT: We understand that, but if he said that he had plans of the blowing up of Leningrad it would be a different matter and he could give that in more detail. But what I am saying is we cannot go into the details about Kiev.

DR. EXNER: Yes.

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BY DR. EXNER:

Q In this connection, I only want to point out without reading them some things contained in the Document AJ 15, which is on Page 149 of the second volume of my document book, and which is a report regarding the detonation in Kiev. But let us not go into it in any more detail. I just want to bring it to the notice of the Tribunal.

A Then I only need to say to conclude that the Fuehrer always expected that what had happened in Karkov and Odessa would happen also in Leningrad, and possibly in Moscow. That was the decisive factor. He had given this order in writing, which was given orally to the armed forces commanders, and his convictio was strengthened by the fact that the Russian radio had already informed that Leningrad had been encircled and would be defended to the last man.

It was exclusively, therefore, for the purpose of protecting German troops against such catastrophes as had occurred when entire staffs had been blown up in Karkov and Kiev. The Fuehrer issued that order, which, in turn, by his express request, was laid down by me in writing. That is the reason why the order began with the words, "The Fuehrer has again decided." It means "once more", "for the second time."

Q Then it was ordered that when Leningrad and Moscow were encircled there should be gaps in the east.

A We did not want these masses of population. We had our experiences in Paris. There it had even been necessary in the summer to use the entire relief grain in Bavaria, which could supply 10,000 people, to save the population from starvation. In Leningrad that would have been quite impossible, because first of all the railways had been destroyed. The rails had not yet been adjusted to our gauge. Supplies were very difficult to get up, and it was, in fact, impossible to assist in any way these millions of people. There would, in fact, have been a real catastrophe. Therefore, there came the thought to press them out of towns eastward into the Russian areas, a thought which was, incidentally, contrary to the theory which is being mentioned here, that we wanted to exterminate the Jews.

Q I now come to another subject. The French prosecutor has accused you that, in the Document U.K. 56, which is R.F. 1438, contained in my document book, the second volume, on Page 153, you had ordered the deportation of Jews,

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and that you, as chief of the military staff, had given a political order here.

Will you please explain how this order came about?

THE PRESIDENT: I think the translation must have come through wrong. You said -- at least, I took it down -- page 153.

DR. EXNER: Page 155; I beg your pardon, Mr. President. It is on Page 155 of the second volume of my document book. The actual order is on Page 156.

BY DR. EXNER:

Q Please, defendant, will you reply?

A I must explain in connection with this document that the deportation of Jews from Denmark was mentioned during a conference at which I did not participate. Himmler suggested it to the Fuehrer, and the Fuehrer approved and ordered it. I was informed thereof either through General Schmundt or Ambassador Hewel.

Following that, and by order from Schmundt, I transmitted to the military commander in Denmark the details of this order. The address and heading of this teleprint message shows that it was addressed to two departments, the foreign office and the commander of the German troops in Denmark. They are the departments which, shall we say, received it, in the main. It was only as a matter of information that the Reichsfuehrer SS received the letter; that is to say that in accordance with our office custom, he would not have to do anything upon it. This did not mean an order to him; it meant merely information to him, because he knew the Fuehrer's decision already.

But I did not by any means order the deportation of the Jews. I wrote that the deportation of Jews is being carried out by the Reichsfuehrer SS.

Q That is Point 2?

A Point 2. Had this been in order, then it would have had to be addressed to the Reichsfuehrer SS, and it would have had to be worded like this:

"Reichsfuehrer SS will deport Jews from Denmark."

But this is exactly the other way around. This figure 2 is informing General von Hannecken in Denmark that he will have nothing to do with this affair, but that it is being handled by the Reichsfuehrer SS. General von Hannecken would know that, because there was a military regime. He had executive powers for Denmark, and if something like that had been done without his

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knowledge, then he might have objected to it at once and not tolerated it.

The matter appeared to me so urgent that, in order to avoid incidents, I informed the military commander in Denmark quite openly over the telephone, without any consideration for the necessary secrecy.

If the French prosecution mentioned indiscretion in this connection, which made it possible for most Jews to escape from Denmark into Sweden, then it is presumably due to that telephone call that this was possible.

Finally, therefore, I was not in any way thinking of ordering the deportation of Jews. I merely informed the military commander in question that he had nothing to do with this. Apart from that, as I heard afterwards, when I made inquiries, these Jews were taken to Theresienstadt. They were looked after and cared for by the Red Cross; and the Danish ambassador even declared himself satisfied with their treatment.

DR. EXNER: May I draw the attention of the Tribunal to one point which I consider to be an insufficient translation into English and French. Under Point 1 on Page 156 of the second volume of my document book, it does not mention the word "volunteers" in the translation. It says, "The Reichsfuehrer SS has permiss: to recruit from the former members of the Danish forces volunteers." And the word "volunteers" is not in the English translation. In the French, it merely says "hommes", "men."

BY DR. EXNER:

Q Tell me, defendant, you actually had no dealings with matters in occupied territories. That, if I understand you correctly, was outside your jurisdiction. Why did you sign this order?

A Actually, that matter did not concern me at all. But I signed it because on that day, Field Marshal Keitel was absent.

Q As we are just now talking about Jews, tell me, what do you know about the extermination of Jews? And I remind you in that connection that you are under oath.

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A I know just how improbable these explanations sound, but very often the improbable can be true and the probable untrue. I can only say, being fully conscious of my responsibility that never, and with no hint, word, or document, did I ever hear of the extermination of the Jews. On one single occasion I became distrustful, and that was when Himmler was taling about the revolt in the Jewish Ghetto. I did not quite believe in this heroic fight, but Himmler immediately supplied photographs showing the shelters which had been built there, theemplacements, and he said: "It is not only the Jews though; there are Nationalists. They entrenched themselves there and there is bitter resistance." And with that he settled my suspicions.

THE PRESIDENT: Are you speaking of Warsaw?

THE WITNESS: I am speaking of the uprising in the Warsaw Ghetto of which I heard through a personal report from Himmler in the presence of our soldiers and the Fuehrer and during which he never talked about anything but an uprising and bitter fighting. As far as the action of the police is concerned, the so-called action groups, Einsatzgroppen---a conception, incidentally, which I only heard of in this court room --- as I said, as far as these police units are concerned, there has never been any other explanation through the Fuehrer than that they were supposed to be necessary to combat uprisings, rebellions, partisan fights, and stop them before they could grow, something which it was said the Armed Forces could not do and which was supposed to be a task for the police. That, it was said, was the reason why the police would have to enter Army operational areas. I have neverhad any private information regarding the extermination of the Jews, and as I am sitting here, I can swear that I heard all these things for the first time after the end of the war.

THE PRESIDENT: I don't think it is necessary to point out to you that you can't speak about there having been no explanation to the Fuehrer; you can only speak about there having been no explanation to yourself. The translation I heard was, as to these Einsatzgruppen, that there had been no explanation to the Fuehrer.

THE INTERPRETER: From the Fuehrer.

THE PRESIDENT: From the Fuehrer?

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THE INTERPRETER: Yes, My Lord

THE WITNESS: I said that the Fuehrer had never given us any other reasons for the use of police forces than by saying that there was the necessity for police measures to be introduced.

THE PRESIDENT: I misheard the translation. Thank you.

BY DR. EXNER:

Q Did you know anything about concentration camps, how many? Please be brief.

A I can briefly say that I knew that there were concentration camps at Dachau and Oranienburg. Oranienburg I knew of in 1837 because officers from a certain department visited it and they gave me enthusiastic reports about it. The name "Buchenwald" I heard for the first time in the spring of 1945. I thought it was a new troop training site when the word was used and I made inquiries. As far as the inmates were concerned, there was never any other story than that German professional criminals and certain political sworn enemies were there, who, like Schuschnigg or Niemoeller, were held under sort of honorary detention there. Never has there been a single word about tortures of important persons who were there or prisoners of war, of crematoriums, gas masks, of tortures not unlike the time of the inquisition, of medical experiments; and I can only say that even if I had heard it, I wouldn't have believed it until I had seen it with my own eyes.

Q The French Prosecutor has referred to a statement of theGerman General of the Police, Pancke, which he read. According to that, during a conference on the 30th of December, '43, you are supposed to have been present together with Hitler, and , during that conference terror and counter terror in Denmark is supposed to have been discussed as well as reprisal measures. What do you have to say about that?

A I think it was on the 30th of December, 1943. In some points that statement is correct and in others it is incorrect. During that conference, at least so long as I was present, the word "murder" was never mentioned at all. The Fuehrer explained that the terror which was now beginning, sabotage and attacks in Norway, that this terror was to be met with exactly the same weapons. That is to say, if a Danish firm working for Germany is blown up, which of course did happen, then a firm will also be

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blown up which is working for the Danes only, and if certain individual bases of ours are attacked by a terrorist group, which, of course, also happened, then these terrorists will be sought and they, too, will be surrounded, and they, too, will be killed during battle; that he did not wish to have court martials, which would only create martyrs. With no word, however, did he speak of innocent Danes being murdered as compensation. That is all I can say, namely, that in my presence and in the presence of Field Marshal Keitel only that was said and nothing else. Again, it is most doubtful, from thepoint of view of international law, whether a fighting force might not be entitled to meet the fighting methods of their opponents by adopting the same methods when they fight against them, particularly during these rebellions and Franc-Tireur fights. That seems to be most doubtful.

Q You just said "in your presence". Wereyou not there during the entire conference? Can you remember?

A I do not believe that any such statements were made when I was absent. I was there for a short time, probably fifteen minutes.

Q We now come to the bandit fights. Bandits have been mentioned a great deal in this court room. Tell us briefly, whowere these bandits?

A It is not easy to define that, considering the type of fighting which was used during this World War, but there are five gruides which must exist in that connection. Firstly, they must be a fighting group which is forming behind their own front; secondly, they must only be partly or not at all wearing uniforms; thirdly, they are not members, initially, of the Armed Forces even if they receive their orders from there; fourthly, they must be in a position, or, generally speaking, are in a position to hide among the population --

THE PRESIDENT: We don't require a lecture about this matter.

BY DR. EXNER:

Q Well, then, approximately, we know what bandits means, but I now want to hear about the fight against bandits. First of all, I shall read what we have here about bandits, and that is Document L 180, USA. 276, which is contained in the second volume of my document book on Page 121. That is a report from an action group against bandits, and it is Enclosure No. 9;

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something which is to be found on Page 122 appears to me to be relevant and of importance. First of all, I refer to point 5, Roman numeral I, point 5, I quote: "In thelarger cities, especially those with industrial facilities, so-called Istribitjelni-Battalions (ie destruction battalion) were formed by the Soviets before theentry of the German troops." It then states, after Roman numeral III: "The tasks and fighting methods of the various Partisan groups has become known partly from the experiences in combatting them and partly from the captured combat directives of the Partisans themselves. The statement of a captured Partisan of a battalion stationed at Leningrad is significant: ' A Partisan must destroy everything that he can reach.'"

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And then in one of the "Combat Directives for Partisan Groups," transmitted to the Commander of the Army Area North (Rear), it is stated that "unbearable conditions are to be created for the enemy and his accomplices in territories occupied by the enemy. All measures of the enemy are to be prevented."

And then there is reference to bridge demolitions, demolition of roads.

In the last paragraph, on page 123, it states that the Partisans are to camouflage themselves cleverly, that they are to be disguised as farmers and to work in the field as soon as German military personnel are approaching.

The witness, von Dem Bach Zelewski has stated here that the fight against bandits had been carried out and that chaotic conditions -- by which he meant it wasn't directed from above -- existed, and you obviously must be informed about that, is that trye?

A. No, it is not. This expert on bandit fighting apparently has a very poor memory. I draw your attention to the document, F-665, in Document Book 2, on page 126. This shows the first page of fighting instructions against bandits. It is called Pamphlet for Bandit Fighting.

I myself, on the 6th of May, 1944, signed this document, and the Tribunal will find that it says in its second sentence --

Q. On page 126 --

A. -- that the pamphlet No, so and so, in brackets, directives for conducting the battle against guerillas in the East, is issued by the OKW, Command Staff, and that it is dated the 11th of November, 1942, which by this order is cancelled. This proves that at least since the 11th of November, 1942, the troops had in their possession instructions issued by the Army Command Staff as to just how the battle against gorillas was to be conducted.

Q. I want to draw your attention in this connection to my document, AJ-1, on page 133. It is an affidavit from a certain Wettberg, which I won't read. He reported to me that he himself was engaged in the fights against bandits and he is confirming that there was perfectly well-regulated fighting against bandits after 1942. But then this new pamphlet appeared in 1944, done by you without Hitler's permission?

A. Yes.

Q. What was the cause of that? It was quite unusual, wasn't it?

A. I want to state that this pamphlet was not submitted by me to Field Marshal Keitel, nor to the Fuehrer, because this pamphlet is in contradiction of all existing orders. I shall prove in detail later on that it deals, beginning at that date, with all so-called guerillas in France and in Yugoslavia. Russian guerillas territories were dealt with elsewhere. And it deals with these guerillas as regular fighting troops, and, following that, as prisoners of war.

I took this unusual step because it had become clear to me after the previous shooting of the English RAF officers at Sagan that beginning with that time the Fuehrer no longer was concerned with the humane, legal aspects of warfare, and because since the 1st of May, 1944, I myself felt responsible for questions of international law, because the department of Canaris had been dissolved on the 1st of May. The foreign department, together with the international law department, had come under my orders on the 1st of May, and I was resolved not to tolerate any such violations of international law on our part or allow it, and beginning with that day up to the end of the war I did so.

By this order, guerillas and their assistants, even those wearing civilian clothes, were declared by me to be regular troops or regular prisoners of war, long before Eisenhower had demanded that terrorists in France be placed in that category, because that didn't happen until the 7th of July, 1944.

Q. It has been stated by the Prosecution that the fight against guerillas had been only camouflage to destroy Slavs and Jews, is that true?

A. The bandit fight was an unbelievable reality. Only to quote a figure, I want to point out to you that in June, 1943, 1560 acts of railway sabotage took place. There were 2,600 in September. That is 90 per day. There was a book by Polomarenko, a out which an American paper said that 500,000 Germans had been killed through these gorillas. If you cross off a zero from that figure, it is still quite an achievement for a peaceful Soviet population. But then it si supposed to state in that book that the population was becoming increasingly hostile and that murder and terror were increasing, and that the peaceful Quisling mayors -- burgomeisters -- were being killed. At any rate, it was a tremendous fight which was taking place in the East --

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DR. EXNER: In this connection I want to draw the Tribunal's attention to an entry in Jodl's diary, 1807. The date is the 25th of May and it can be found on page 119 of the second volume. There, under the 25th of May, it says that, "General Halder draws the attention of the Fuehrer" --

THE PRESIDENT: The Defendant stated, I think, that in this directive of his on the 6th of May, 1944, there was an order that guerillas should be treated as prisoners of war. Will you refer us to the passage?

BY DR. EXNER:

". Please, will you state that, Defendant?

". This appears under figure 163, on page 131, of the Document Book. And if I may read it to you, I quote:

"All bandits captured in enemy uniform or civilian clothing or who surrender during combat are to be treated, on principle, as prisoners of war. The same applies to all persons encountered in the immediate fighting area and are to be considered as guerilla accomplices, even when no acts of combat can be proved against them. Bandits in German uniform or in the uniform of an allied armed force are to be shot after careful interrogation if captured in combat. Deserters, no matter how they are dressed, on principle are to be well treated. The guerillas must learn of this."

THE PRESIDENT: Well, since it is one o'clock, perhaps you might break off now.

(The Tribunal adjourned until 1400 hours.)

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Haynes

AFTERNOON SESSION

(The hearing reconvened at 1400 hours, 4 June 1946.)

ALFRED JODL -- Resumed

DIRECT EXAMINATION -- Continued

Q I have one further question concerning the guerilla regulations. The Prosecution charges that you, through Number 161 of the Guerilla regulations, which concerns itself with the document we submitted and used last, F-665, Page 130 of volume 2, were responsible for the destruction of whole villages and even of the populations of the villages, in France. Will you please comment on this?

A I believe the opposite is true. Through Number 116, I decreased collective measures and collective punishments that the Fuehrer had decreed, so that everything would apply under Article 50 of the Hague Landwarfare Rules. In this article collective punishment is prohibited unless the entire population is equally guilty. In these terror measures, therefore, with this Number 161, I did not order the burning down of villages or the destruction of populations, but, on the other hand, I said that such collective measures may only be used in very exceptional cases and then only with the approval of a division commander. for he was the one who had a Tribunal at his disposal and he could carry through a juridical investigation.

I do not wish to bore the High Tribunal with my merit, which may be found in this regulation, in this document. I discussed the good treatment of the population and to leave them the necessities of life, and I do believe, in any event, that that this document actually is a model example to bring this sort of war into the limits of International Law. I did take this. I was of the conviction that at the period of time the French Maquis movement and revolt had begun to turn into a regular war.

Now, the case of the 2nd SS Panzer Division is cited as an example of things that I caused through 161. I can say only that the behaviour of the SS Panzer Division is the responsibility of its commander. Only months afterward did I have any knowledge of this.

I am grateful to the French Prosecution for having submitted this document, and I am grateful also for the statement that the Maquis movement in the beginning was nothing else than a Franctireur warfare, whose heroism I do not dispute.

Q Now we shall turn to a different problem, the low level fliers, as seen in

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document 731-PS and 735-PS, page 139 of document book, volume 11, and page 144 of volume 11 of my document book.

From these documents it can be seen that from various places there were proposals for the treatment of hostile low flying fliers who had made emergency landings. Can you tell us, first of all, what was the reason for this and what was your position of attitude toward these proposals?

A I shall try to be as brief as possible. The reason was the reports on the hunting of people by several hostile aircraft. The Fuehrer demanded countermeasures, and in this way the report-notice came into being, 731-PS. RF 1407. It is not a draft for an order and it is not an order. It is only a note. This note contains proposals given by the Luftwaffe in this manner. There was no talk about lynching. The fact that I concerned myself with this problem at all was based on the reason which I have previously mentioned, the problem of responsibility which, since 1 May, I believed I had as far as problems of International Law were concerned. The comment which I made in this matter has already been read. I objected to a figure which I considered inadmissable according to International Law, and this was later crossed out and replaced.

There is something else, namely, that it was to be considered a murder if a soldier landing with a parachute was shot at. This objection I entered, document 735, PS. The concept of lynching --

DR. EXNER: I should like to state where this passage is, for the assistance of the Tribunal. This remark is found on page 144 of my document book, and in this handwritten addition, various proposals are made, and then Jodl adds number 3, and this is his addition.

BY DR. EXNER:

Q Please comment on this, defendant.

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A. My notation was: Is the Foreign Office in agreement with Point 3-B; namely, is the shooting of aviators who have been shot down and are parachuting to earth to be considered a terrorist act?

This point 3-b may be found up twoard the top of the same page.

Q. Will you please continue.

A. And I should like to say that the concept of lynching was added by an article by Goebbels, published in the Voelkischer Beobachter.

The more I concerned myself with this problem, the more it was obvious that nothing at all could be done with measures of this kind, for one could never apprehend a guilty low-flying aviator, for he would either escape or he would be dashed to the ground and die. This would only lead to a general murder of aviators.

Therefore, I made the decision -- and I was in complete agreement with Field Marshal Keitel on this point -- to bring about the failure of this entire action.

The Court can see that between Document 731-PS, which was compiled on the 21st of May and Document 735-PS, 16 days had elapsed wherein nothing had been done. If, when on the 6th of June I received a rather length report, I noted on it, "This is not efficient; we have to start all over again. How can we determine that we will not act like this against enemy aviators? Should some legal procedure be arranged or not?" then, My Lord Justices, this is absolute proof that I had not other intention except to stall untilthe matter had solved itself. And I was successful in doing that in this case. No military office issued an order. We did not even go so far as to have a draft of an order. The only thing we had was the scraps of paper. It has been proved and will be proved further that many months afterwards the Fuehrer made the gravest accusations against us and against the Luftwaffe for our action in regard to the order at the time involved.

Q. Now we shall turn to something entirely different. The Chief of the OKW, in a letter, designated you and Warlimont to colloborate with the Eastern Ministry of Rosenberg. That is Document PS-865, USA-143. How did that work out in practice?

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A. Not at all. As far as the Ministry of Rosenberg was concerned, apart from one conference in the year 1943, I had no connection with Rosenberg's ministry at all. The only collaboration which went on constantly was carried on by my propaganda division, for all pamphlets which it compiled and which were distributed over Russia had been discussed first with the Eastern Ministry.

Q. Then why were you appointed at all? Why was that necessary?

A. That was purely a matter of form, since Minister Dr. Lammers wrote generaly to each higher Reich office, asking that a deputy be designated. Then Field Marshal Keitel designated a deputy.

Q. We shall now turn to something new. We have been shown the rather remarkable document C-2, USA-90, which is not contained in my document book, but I believe in all probability the Court will recall that this is a compilation in tabular form in which certain incidents of significance in international law are cited. In the second column there are examples; in the third and fourth, examples.

MR. ROBERTS: It is page 163 in the big document book.

Q. (Continuing): This is a diagramatic compilation which sets down on one side a certain incident, and on the other side is set down the attitude of international law, Voelkerrecht. That is, the judgement of international law and the propaganda explanation or other reasons in regard to this incident are set forth.

This is really a truly remarkable document. What are the atecedents of it? Twelve infringements of internationa law by our side are set down, and, I believe, 13 infractions of international law by the enemy.

A. I do not believe that this document is so remarkable after all. It came about at the end of September 1938, shortly before the Munich conference, since I did not know for certain in my division whether we would have an armed conflict or not, and since at that time the stipulations of internation law were not clear to us. I wanted, through a wealth of examples, to have the Voelkerrecht Gruppe, the International Law Staff, tell me what the attitude at that time would be against infractions of international law.

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Every office in my division then wracked his brain for examples, and we tried to cover every branch of international law through a specific example.

I believe that this is noteworthy, that even at that time we concerned ourselves with the concept of international law. There can be no doubt whatsoever that I carry responsibility only for the fact that I searched out these examples. But if one were to object to the answers to the problems or rxamples, as far as the background of war is concerned, I can only say that this doesn't even originate with me; this emanated from the office of Canaris.

Apart from that, it shows a very, very, careful and noteworth attitude to international law, specifically concerning air warfare. In any event, it is on a much higher level than that which was carried out in practice.

Q. Therefore, was it the intention to commit these infractions of international law?

A. Not at all, but as someone who knew the history of war, I knew that never in this world has there been a war which did not produce infractions of international law.

If, perhaps, there should be objection to the explanation by the Propaganda Ministry, which is the paragraph at the end, I should like to point out that the judgements as far as international law were concerned were to be taken into consideration. Admiral Buerckner, who answered of his own initiative, pointed out that propaganda could be used only after the points of international law had been cleared.

The whole matter of the answer was only a temporary one, since first the Foreign Office and the various branch chiefs of the Wehrmacht would have to be listened to.

DR. EXNER: I asked for Admiral Buerckner as a witness to answer these questions, but it seems to be a more or less insignificant matter, and I shall therefore forego the calling of this witness.

BY DR. EXNER:

Q. Now, I should like to put a rather general question in this connection. In general, what was your attitude as to the limitations of the conduct of war by international law?

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A. I considered international law as the absolute prerequisite for the decent and moral carrying on of the war, and I knew international law very well, and I observed it. The Hague Land Warfare Regulations and the Geneval Convention were always found on my desk.

I believe that by my attitude on the Commissar Order, by my attitude towards mob justice, and my attitude toward the intention to leave the Geneva Convention, which all commanders in chief and all branches of the Wehrmacht and of the Foreign Office rejected very, very abruptly, I have proved that I tried, as far as it was possible for me, to observe international law.

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A Of course, there is a wealth of positive proof available and the documents themselves will probably be mentioned by my defense counsel. I should like to point out rather generally and cite the behaviour of the German Wehrmacht in Norway, a matter which I worked out and dealt with myself. I should like to poir out the matter of guerilla regulations.

Q I should like to submit AJ-14, on page 99 and 100 in my document book, Volume I. These are special directives for conduct and personal relationships at the occupation of Norway and Denmark, a directive which was issued in connection with the occupation of these countries. There are some very charateristic sentences contained in this document, sentences which I would like to read, If you will please turn to page 98, point I "The military occupation of Denmark and Norway is taking place for the purpose of insuring the neutrality of these countries. At the same time the objective must be to execute the same peacefully

Then on page 99, at the top it says:

"Directive for conduct in personal relations with the Norwegian population.

"Every member of the army must be aware that he is not entering enemy country, but the troops are entering Norway for the protection of the country and for the safety of its inhabitants.

"Therefore, the following is to be observed:

"I. The Norwegian has a strongly developed national consciousness. Moreover the Norwegian people feel themselves closely related to other Nordic people.

"Therefore: avoid anything that might wound national honor."

Point 2 is rather characteristic as well. Then I shall turn to point 4. It is found on the top of page 100.

"The home of the Norwegian is holy according to the Old-Germanic conception. Hospitality is willingly practiced."

THE PRESIDENT: It is not necessary to read all of this. One paragraph is enou to show the nature of the document, isn't it?

DR. EXNER: Then I should like to point to the remainder of the document which I shall not read, and ask that the High Tribunal take official notice of this document.

Then there is a directive here, AJ-16-

THE PRESIDENT: That last document doesn't appear to have been signed by the defendant, does it?

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DR. EXNER: It isn't signed by the defendant.

BY DR. EXNER:

Q And what is the connection this document has with you, defendant?

A It is signed by von Falkenhorst, and it is well known that is the Norwegian section of the Wehrmacht Operational Staff, and the staff of von Falkenhorst were a unit and I participated in the drawing up of this document and I submitted it t the Fuehrer and the Fuehrer approved of it, and there is an entry to that effect in my diary.

Q Then AJ-16, which I should like to submit herewith. These are special regulations for the administration of the occupied countries of Holland, Belgium and Luxembourg. This is page 161, volume 11 of my document book. I shall quote only from page 162 in order to save time. I shall read perhaps the last sentence.

"The International Law is to be strictly observed in every case" -

But I should like to have the High Tribunal read the other regulations and have them take judicial notice of it.

In this same connection I should like to mention document PS 440 GB 107, my document book 11, page 164. Those are directions. No. 8 is the conduct of war, dated 21 November, 1939. It concerns itself with the tasks of the air force. Perhaps I can read just one paragraph:

"Localities, especially large open cities and industries are not to be attacked without a compelling military reason, either in the Dutchm nor Belgium or Luxembourg areas." Signed Keitel.

Did you also draft that?

A I drafted this order.

Q Then we can refer to the Guerilla fighting regulations, a matter which has been discussed here also?

A Then I should like to refer you to something I believe I testified to already that immediately I ordered an investigation of the case already.

Q Did you concern yourself with the International Law as a basis of your orders

A I believe I have already stated that I concerned myself very carefully with the basis of International Law as that applied to my orders. I do not wish to detain the Court with the insight I gathered from these regulations. I should like to conclude with that and say that through the fact that there were no regulations in air warfare, this rather deplorable situation arose and confusion in the

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conception arose, that is, between rebellion and legal war, between Franctireur and informant, between spies and informant, between demolition crews and saboteurs, and many times with the help of air craft a rebellion could be changed or would be changed into a legal war, and a legal war could be reduced to the state of rebellion, and that is the significance in International Law of parachutists and supplies by way of air.

Q And in this connection, I should like to submit the affidavit of Lehmann, AJ 10. This document has not been submitted to the Court since the Prosecutor declared yesterday he would agree to the use of this affidavit. I believe it originates with Colonel General Dr. Lehmann. If the High Tribunal will declare this affidavit admissable I perhaps can refer to it, we would like to submit it, although it has not been translated as yet, since we only received permission yesterday, or yesterday the granting took place in Court.

MR. ROBERTS: We said yesterday we had no objection to the affidavit, although there was no actual order granting the affidavit of Lehmann, My Lord, it is very short, especially the copy I had, and I think there is no reason to object to it.

DR. EXNER: Then in order to save time, I shall just cite passages or refer to it and ask that the High Tribunal take judicial notice and read the testimony of Dr. Lehmann. It seemed to be significant to me, and in any event he was the highest jurist in the German Wehrmacht General Staff.

THE PRESIDENT: You had better give it an exhibit number.

DR. EXNER: Yes, AJ-10 was the exhibit number I gave it, Your Honor:

BY DR. EXNER:

Q And this gentleman is making statements about legal discussions which he had occasion to carry on with Jodl and he gave us Jodl's attitude toward legal questions, and now, Colonel General, in connection with the legal war crimes, there is one last question which comes to our attention. Frequent orders in the war diary entries arecharged against you. Did you have occasion or opportunity before you were captured to destroy this material?

A Yes, on the 3rd of May, until the 23rd of May, I had time and leisure to burn every piece of paper, but I had given instructions to my staff not to destroy a single file, for I felt I had nothing to conceal, but the complete files, and above all, the especially vital and important ones and originals from the Fuehrer, beginning back with 1940, I submitted them to the American officer when I was being

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captured.

Q And now, I shall turn over to the following war crimes against peace. First of all we have to make clear which offices and ranks you held during this critical period. Perhaps you can deal with 1933.

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A From '32 to '35 I was in the division which later was called the Operational Division of the Army. From the middle of '35 until October '38 I was Chief of the Division of the Office for Defense and in the Wehrmacht office which was later called OKW.

Q Then the Wehrmacht AMT was later christened OKW?

A Yes. From October '38 until shortly before the Polish campaign I was artillery commander at Vienna and in Bruenn, in Moravia; and beginning with the 27th October 1939.

Q Just a moment please. 27th of September?

A No -- August, rather. 27th of August 1939 I took over the management and task of the Chief of the Operational section.

Q Now, we shall begin at this time in the years 1932 to '35 when you were in the so-called Operational Office. Did you concern yourself with war plans?

A At that time in the Operational Division there were no preparations, only a directive for the improvised border protection in the east. This was a rather sudden organization and there were preparations for evacuation measures along the whole German border in case of hostile occupation; that is, in the case of so-called sanctions. There was nothing else beyond that.

Q Were you connected with the announcement of the general conscription?

A No, I had nothing to do with that. I believe I heard about this the day before.

Q What was your sphere of missions as chief of the branch of the national defense from June '35 to Octber '38?

A In this position I had to set down the operational strategic directive according to the instruction of my chiefs, Keitel and Blomberg. I had to concern myself with these matters and I had to study and to clarify the problem of the leadership of the Wehrmacht, to set down studies and maneuvers. There was an extensive Wehrmacht maneuver in '37. I had to take care of the Wehrmacht Academy; I had to work out drafts for laws which were connected with the general conscription order; and with the unified preparation for mobilization in the civilian sector, that is, of state and

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people; and the so-called Secretariat of the Reich Defence Committee belonged to me and my office.

Q Can you tell us, what were you at that time? What was your military rank?

A I came into this as "Obertslieutenant" I believe; in the year '36 I was promoted to "Oberst", which was Colonel.

Q Did you participate in the "Reichsverteidigungsgesetz," Reich defense law?

A No, this law originated before I entered the Wehrmacht AMT.

Q But the Prosecution is accusing you of participation on the basis of a supplement which you made to the Document 2261, USA 24. That is the document to be found in volume 1, page 9. In this document it says "in the enclosures I will send you a copy of the Reich Defense Law of the 21st of May 1935. Signed by Blomberg."

This is dated the 24th of June. Then there is a supplement paragraph 3d of September '35 to the Defense economic group 1-A, copy transmitted and signed Jodl. What can you tell us about that?

A It is indisputable that whenever a Reich law was issued I had to transmit the copy to the other offices, and I do not have to say any more than that.

Q But the drawing up of the law itself you yourself did not participate in?

A No.

Q Were you a member of the Defense Council Executive?

A No.

Q Member of the Defense Council?

A I was that automatically at the moment when I took over the leadership, the direction of the experts council, and in the tenth session of this meeting of experts on the 26th of June 1935 General von Reichenau designated me and introduced me as his deputy.

Q And what was the purpose of this committee? We have already discussed this matter, therefore be as brief as possible.

A Just to use a few words, in this committee a unified mobilization, the mobilization of state and people, in

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agreement with the military mobilization, was prepared, and this mobilization wa laid down in the mobilization books.

Q. What were these various graduated steps which were set down?

A. We had learned these matters from France and we had copied them. The French followed the procedure that mobilization was carried through in five degrees.

THE PRESIDENT: Do we need the detail about this?

DR. EXNER: Very well.

BY DR. EXNER:

Q. Perhaps you can tell us what this sense was, why these lines were taken over. What was the reason?

A. Thepurpose was so that they would have a means, as was customary all over Europe at this time, so that an intensified readiness for war could be set up before the public order for mobilization was issued.

Q. Did the Reich Defense committee concern itself with armament?

A. No. It did not concern itself with armament at all.

Q. Did the Reich Defense committee concern itself with political plans or intentions?

A. Political problems were in no manner the concern of this body but in event of a war only was the case of mobilization. But no certain war, but all mobilization for any and all war which was possible.

Q. In this committee you concerned yourself with mobilization books. Is that correct?

A. Yes. I believe I already said that.

Q. How about these books?

A. In these books the details of all the chief Reich offices were set down and with figures so they could be recognized.

Q. What do you mean by that?

A. I mean the various ministries.

Q. You mean the civilian authorities?

A. Yes, the civilian authorities.

Q. And the preparation taken by them had to coincide with the preparations

by the military; and what were the preparations in the demilitarized zone?

A. The preparations in the demilitarized zones concerned themselves solely and alone with the evacuation, that is, the surrendering, of the areas West of the Rhine in case of a French occupation.

Q. I believe we have discussed that at length already, and in this connection I should like to refer to 405 E.C., GB-460, page 11 of my document book, where in the first volume the 10th session of the Executive Council is mentioned. You are accused that you had decreed the topmost secrecy concerning all of these preparations, which according to your picture just now were of a purely defense nature. Why was this decree of secrecy?

A. The keeping secret of measures of that kind is taken for granted in the entire world, but with us in Germany it was especially important, for the civilian authorities for years were not customary to concern themselves with things military, and it seemed to me especially important that in foreign countries there would not arise a misinterpretation or, say, the capture of an order like this so a misunderstanding -- misunderstanding which have been shown characteristically in this proceeding when we talked about the "Freimachung," the clearing of the Rhine.

Q. And why did you decree secrecy so that foreign countries would not be stirred up?

A. At that time we were in a position of much greater weakness than at the time when we had an army of 100,000 men only. This army of 100,000 men had been dispersed into hundreds of small groups. It was the time of our very, very greatest impotence, and at that period we had to be very, very careful in order to avoid any and all tension abroad with foreign countries.

Q What were the military plans of those days?

A I have already said that they were the preparations to protect the borders. And at that time, I also worked on instructions for the commanders in the east, because, in case of a sudden attack by Poland, it would be cut off from the Reich.

Q Did you know of any intentions of attack -- that is, German intentions of attack -- at that time?

A There was no thought and no talk about that at all.

Q From the 12th session of the Reich Defense Council, I should like to quote one sentence, Page 14 of Volume 1 of my document book, EC-407, GB-247. At that meeting was Oberstleutnant Wagner of the OKH. Who was that?

A He was the later quartermaster general.

Q Lieutenant Colonel Wagner said:

"The outcome of the war" -- that is, of the last war -- "has left a completely changed military, political situation in the event of a future war, namely the necessity for waging it in one's own country."

He said that on the 14th of May, 1936. What would you gather from this sentence?

A Of course, one can perhaps say --

THE PRESIDENT: (interposing) Dr. Exner, surely it is a statement by somebody else, and this statement speaks for itself. It is not a matter that this witness can interpret to us.

DR. EXNER: Very well.

BY DR. EXNER:

Q Now, can you tell us, in the Truppenamt and later in the division for the defense of the country, did you concern yourself with armament?

A I personally had nothing at all to do with armament in the real sense. That was a matter for the various branches of the Wehrmacht, the army, the navy, the Luftwaffe; and it was dealt with and handled by their organizational staff. The commanders-in-chief discussed these matters with the Fuehrer directly. But there is the fact that my General Staff work contributed to the reconstruction of the German Wehrmacht. That I know, and do not wish to dispute.

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Q Your diary, 178o PS, does not contain a word about armament, and it seems obvious that at that time you did not concern yourself with those problems. What were your thougths and ideas on this problem of armament? Was yours an attitude that was positive?

A At that time I was of the opinion, as were my superiors -- and it was characteristic -- that on the day before the declaration, 36 divisions would be set up. Blomberg as well as Fritsch suggested to the Fuehrer to set up only 24 divisions. They were afraid that there would be a dilution of the entire army, and perhaps they were afraid of rather stormy foreign politics, and politics which would be based on strength and forces which were set down only on paper.

Q Please tell us, what deadline did you concern yourself with as far as armament was concerned, in the year 1935? What deadline did you set?

A Various graduations were set. The first deadline set was 1942-43, and the West Wall was to be completed by 1945. The construction of the Navy concerned itself with the year 1944-45.

Q At that time -- that is, the opinion that you held at that time -- what was the objective of armament?

A Since a disarmament had not come about, the objective was to establish military parity between Germany and her neighboring countries.

Q At this point, in this connection, I should like to refer to a document which has already been submitted, the report of General George Marshall, a two-year report. This has already been submitted as Raeder No.19. I have a part here before me, a part which I wanted to use as AJ-3. I submitted it under AJ-3, Page 168. This deals with the problem of rearmament, tending to be some sentences which in reality to me seem to hit the nail righton the head.

In the second paragraph on Page 5, or rather the last sentence there, we see:

"The world does not seriously regard the desire of the weak. Weakness presents too great a temptation to the strong, particularly to the bully who schemes for wealth and power."

Then on the next page there is another sentence:

"We must start, I think, with a correction of the tragic

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misunderstanding that a security policy is a war policy".

Can you tell us, please, at that time, what was our military ratio as compared with the foreign countries, our military strength ratio?

A In the year 1935, when we set up 36 divisions, France, Poland and Czechoslovakia possessed 90 peace divisions, and 190 divisions in war. We had almost no heavy artillery, and the armored weapons were in the most primitive stage of their beginning.

The concept of defensive and offensive armament has been discussed on various occasions. However, it would lead us too far afiels to enter into this discussion. But I should like to say only that as far as Germany was concerned, with her geographical position, this concept did not apply, this disarmament concept. The disarmament concept, after months of discussion, failed because of the difference in the conception of this idea.

I should like to quote from an excerpt in this report of George Marshall, Page 168 of my document book, the document out of which I have just quoted, and again just one more sentence in the first paragraph:

"The only effective defense a nation can now maintain is the power of attack".

Now, however, the prosecution asserts that you should have known that such a tremendous rearmament as the German rearmament could serve only for an agressive. Will you comment on this please?

A I believe this can be explained only on the basis of military non-knowledge. Up until the year 1939, we were, of course, in a position to destroy Poland alone. But we were never, either in 1937 or 1938, actually in a position to withstand a concentrated attack by these states together. And if we did not already collapse in the year 1939, that was traceable only to the fact that roughly 110 French and British divisions in the west during the Polish campaign, as against 23 German divisions, were completely inactive.

Q Can you tell us, when did this strong rearmament actually come about?

A The actual armament was carried through only after the beginning of the war. We entered into this world war with perhaps 75 divisions. 60o/o of our total population had not been trained. The peace time army amounted to perhaps400,000 men, as against 800,000 men in the year 1914. The witness Milch has already testified on supplies, stores, amunition,

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and bombs. These supplies were ridiculously low.

Q Then, I should like to refer to and read a war diary entry of yours, Page 16 of Volume 1 of my document book, which is 1780 PS.U.S.A.72. There, on the 13th December you said:

"The General Field Marshall after having described the situation reports on the status of the war potential of the Wehrmacht, whose greatest difficulty lies in the insufficiant supply of amunition of the army -- 10-25 days of combat -- 6 weeks' supply."

That was the period of time for which we had munitions.

Now I shall turn to the question of the occupation of the Rhineland.

THE PRESIDENT: Let us break off now.

(A recess was taken)

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Q Colonel General, when did you first hear of the plans to occupy the Rhineland?

A On the 1st or 2nd of March, 1936; that is to say about six days before the actual occupation. I could not have heard earlier because before that the Fuehrer had not yet made the decision himself.

Q Did you, as a General, have military objections against that occupation?

A I have to confess that we were about as frightened as a gambler who was putting his entire fortune on.

Q Did you have legal objections?

A No; I was neither an International Law expert nor a politician and, politically speaking, that agreement between Czechoslovakia, Russia and France seemed to have made the Locarno Pact entirely superfluous; and that was something which I accepted as a fact at the time.

Q How strong were our forces in the Rhineland after the occupation?

A We occupied the Rhineland with approximately one division, but only three battalions of that went into the territory west of the Rhine; one battalion went to Aachen, one to Trier, and one to Saarbruecken.

Q Three battalions. That is really a symbolic occupation, isn't it?

A Yes, and they only acted symbolically.

Q Did you do anything to avoid a military conflict because of that occupation?

A There were serious reports which reached our military attaches in Paris and London at the time. I could not fail to be impressed by them. We suggested to Field Marshal von Blomberg at that time that perhaps he ought to discuss the withdrawing of these three battalions west of the Rhine if the French would withdraw for to five times as many men from their part of the Rhine.

Q Was that suggestion ever made?

A Yes, it was made to the Fuehrer but he turned it down. What he refused quite definitely was General Beck's suggestion that we should declare that we would not fortify the territory west of the Rhine. This suggestion came from General Beck and the Fuehrer refused it.

Q Did you think at the time that that action contained any agressive intentions?

A No, there couldn't be any mention of aggressive intentions because the French Army alone could have blown us off the earth, considering the situation we were in.

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Q Do you now think that the leading men had aggressive intentions then?

A No, nobody had aggressive intentions, but it is of course possible that in the brain of the Fuehrer there was a connection between that occupation and the thought that this was a prerequisite for actions later to be taken in the East. That is possible but I don't know because I didn't see in the Fuehrer's brain.

Q But you did not, presumably, see any outward signs of it?

A No, I didn't.

Q Did you know of the so-called "testament" of Hitler's dated 5 November, 1937, which has been read out in this court room?

A The first time I heard of it was from Keitel.

Q What did you know at that time about it?

A Field Marshal von Blomberg informed Keitel and Keitel informed me that there had been a discussion with the Fuehrer, when I asked for the minutes I was told that no minutes had been taken; but I drew my own conclusions as the diary shows. What I was told wasn't in any way sensational and hardly different in any way from information which had been contained in general directives for the preparation of the war. I can only assume that Field Marshal von Blomberg at that time kept these letters to himself because he may not have believed that they would ever be carried out.

Q Was there a march plan against Austria?

A There was no plan for the march into Austria. That I must emphatically state in this connection.

Q Now we come to document C 175, a directive which has the number USA 68. It is in volume I, Page 18 and the following pages. It is a directive for the unified preparation for war of the armed forces of the year 1936, and the prosecute has only quoted the operation order from the instructions, which seemed to creat the impression that this was a plan for the campaign against Austria. How does the importance of this directive really find its explanation?

A It was one of those typical preparations for war, unified preparations as they were for any thinkable case. Such directives came out every year in Germany ever since there was a General Staff and compulsory military service. This theoretical military work before us made a difference between two cases, namely, such cases of war which, because of their nature, were politically probable, or might be probable, and such cases which were improbable, As far as the first were

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concerned, a campaign was to be drafted by the Army and the Air Force, while where the later is concerned, there were only to be the appropriate considerations. If the Tribunal would turn to page 21 of the document, there appears, at the end of the page under Part 3, a sentence: "The following special cases are to be considered inside the High Command generally without participation by outside authorities", and the operation "Otto" appears a mong such cases on Page 22.

Q This document, on Page 18, is that an order which is valid from the 1st of July '37, until, presumably, the 30th of September, 1938? That is just over a year and that, in turn, replaces another similar instruction which is referred to in the first paragraph, which had been in force

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and worked on for similar problems previously. Did you participate in discussions regarding the Austrian case?

A No, I have not participated in any conferences.

Q It is said in the Trial Brief that on the 12th of February, 1938, you had been to Obersalzberg, and Keitel has already rectified that. Your entry in the diary under the 12th of March, '38, is, therefore, based only on an account which you received through Keitel; is that right?

A Yes. It is merely the outcome, the reflection of a brief account given me by General Keitel about that day. Probably it is somewhat colorful.

Q But then it says, on February the 11th: "General von Keitel and General von Reichenau at Obersalzberg. Schuschnigg and G. Schmidt have been subjected to political and military pressure." In the English and French translations it says that Schuschnigg and Schmidt are "again" subjected to the most serious political and military pressure. This word "again" does not appear in my German original. Then you suggested maneuvers of deception against Austria, and that is being held against you.

A I didn't suggest any maneuvers of deception. The Fuehrer ordered them, and I do believe that they are not illegal, because I believe that in the history of the world, both in peace and in war, false cards have always been used; but the Fuehrer ordered it and that is stated in the entry in my diary. I supplied Military information to Canaris, where our garrisons were situated, and Canaris dealt with it and took it to Munich.

Q What did you think was the purpose?

A I had been told that the purpose was that there might be a certain amount of emphasis so that Schuschnigg would adhere to the agreement made at Obersalzberg; but he returned home.

Q How long previously did you know of the intentions to march in? How long before the actual march in did you know of such intentions?

A On the 10th of March, in the morning just before 11:00, I heard of it for the first time.

Q And the marching was when?

A On the 12th. It was when General Keitel and General Viehbahn, who was then temporarily the chief of the Armed Forces Command Staff, were

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ordered to the Reichschancellery. That is when I heard of the intention for the first time.

Q Then did you have an expose'made or what?

A Then the Fuehrer surprised them by telling them that this was the problem of Austria that had come up; and then they learned that there was a General Staff expose' memorandum called "Otto". They sent for me, together with these instructions, and heard from me that such an instruction was in existence, but in practice nothing at all had been prepared. Since it had only been thought about, and since it was only there for the case of an Austrian restoration and since such a restoration was not pending, the Supreme Commander of the Army had done nothing in practice.

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Q How do you yourself understand the entire Austrian action?

A It appeared to me to be a family row and I thought that that would solve itself inside Austria in the shortest possible time.

Q And how did you arrive at that view?

A That view of mine was due to my great personal knowledge of Austria, with which -- through relatives and acquaintances, through the German-Austrian Alpine Club, to which I belonged as a commoisseur of Austrian mountains -- I had been in close contact. I was more interested in the Austrian mountains than the German mountains. I knew that in that country there had been a government against the will of the people for a long time and that the uprising on Styria was a characteristic example.

Q But now the march into Austria was the carrying out of the suggestion C-175, wasn't it?

A No, the march was improvised completely and done within a few hours, and the result was accordingly. Seventy per cent of all the armored vehicles and cars remained on the road from Salzburg and Passau to Vienna, because the drivers had been taken out of their recruit training and given this task.

BY THE PRESIDENT:

Q Defendant, you said just now, didn't you, that the Fuehrer told them it was the problem of Austria? You said that, didn't you?

A I said that the Fuehrer had informed General Keitel and General Viehbahn on the 10th of March, in the morning; that he informed him at that time. He didn't talk to me, because on that day I hadn't talked to the Fuehrer at all.

Q I only wanted to know the date. You said it was the 10th of March.

A Yes, on the 10th of March, in the morning.

BY DR. EXNER:

Q Is it correct that only peacetime formations marched into the frontier districts, into the Austrian territory?

A Yes; in fact only peacetime units were used, which were meant to take part in the parade in Vienna. All units which might have been necessary for a military conflict, say, with Czechoslovakia or Italy, were stopped at the last moment and did not cross the border.

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Q What about Munich's columns?

A No, they all remained behind.

Q Was there any hesitation amongst political leaders at the last moment on that occasion?

A On the 11th of March, in the afternoon, I had news from the Reichschancellery that the armed forces were not to move in, but that the polic should pass through the armed forces and were to move in on their own. In the evening, however, on the 11th of March -- at 8:30 P.M. -- the final decision reached me, which was that the armed forces were to move in after all. The reason for that hesitation I never heard.

Q So that altogether there wasn't a forcible march in?

A No, it was a purely peaceful march. It was characterized by the fact that the chief of the operations staff of the Army had it suggested to him by me that he should have the band marching at the head of the column and that all drivers should definitely wear spectacles -- otherwise the flowers would hurt their eyes.

Q What was the significance of the order you signed regarding the march? Ithas been put before you under the number, C-182, USA-77. You can remember it, can't you?

A Yes, I can remember. That is nothing other than the note for the fi of something which had previously been orally ordered and which was already being carried out. That written order, you see, would have come much too late

Q And what is the significance of Document C-103, USA-75, referring to a possible clash with Czech troops or Italian troops on Austrian territory? How did you come to that?

A That was based on an inquiry from the General Staff of the Army, for there must be -- even for the most unlikely eventuality -- information as to how to behave, how the troops were to behave. I clarified the matter over the telephone, through General Schmundt, with the Fuehrer, and I then clarified -- put his decision down in writing -- by his order.

Q And how did action actually progress?

A He had progressed exactly as expected. There was a triumphant parad a triumphant march, such as could hardly have happened in history today -- even

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if today one doesn't like to remember it. The population met us as early as during the night. The customs barriers fell, or were taken down, and then the entire German forces experienced that march only under the hail of flowers.

Q We now turn to the question of Czechoslovakia: Did you participate during the conferences on the 21st of April, 1938, and the 28th of May, 1938, which the Prosecution have described as"Conspirators' Conferences"?

A I did not participate in any of these conferences.

Q What type of General Staff work were you carrying out for the Case Green -- which is, of course, the Operation Czechoslovakia?

A In that case I have to come back to Document C-175, which is on page 17 of the first volume of my Document Book.

In that general directive for the unified preparation for war, the two important cases were being dealt with, or were to be dealt with, a defensive action, against a France which might start the war. That is Operation Red. And an offensive action -- that is Case Green -- against Czechoslovakia. That would have been dealt with in just the same way, even if there hadn't been an acute conflict with Czechoslovakia, because a war on two fronts -- which was the problem we always faced -- could never be conducted in any other way than by means of an attack against the weaker. This directive, as far as the Case Green is concerned, had to be dealt with anew at the very moment that Austria automatically became new or operational territory. Thus, on the 20th of May, 1938, a new draft was created for Operation Green. It was done by me and it began with the customary words, "I do not intend with a reasonable time to proceed against Czechoslovakia."

Q That quotation is PS-388, USA-26. It is the document dated the 20th of May, 1938. "I do not intend to attack Czechoslovakia within a reasonable time." Now, what were you going to say?

A That, as I was going to say, was the 20th of May. On the 21st, the day after, an incredible incident occurred, however. Czechoslovakia not only mobilized but even took up positions along our borders. The Czechoslovak chief of the General Staff explained this by saying that twelve German divisions had been stationed in Saxony. I can only state -- and my diary entries prove it -- that not a single German soldier had been moved. Nothing -- absolutely nothin

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had happened.

DR. EXNER: In this connection I think I ought to draw the attention of the Tribunal to a questionnaire, an interrogatory -- AJ-9. It is an interrogatory submitted to General Toussaint who at that time was the German military attache in Prague. And he confirms the mobilization of that time. Third volume, at 199. On page 201 of the document there is a question, "What was the reason for the Czechoslovak mobilization in May, 1938?" And he answered it, "It is my personal opinion that the Czechoslovak government wished to force her political allies to take up a definite position. Krejci, the Czechoslovak Chief of the General Staff, informed me, as reason for the mobilization, that he had exact information that ten to twelve German divisions had assembled in the Dresden area and that he could no longer bear the responsibility of not taking any counter-measures."

And then there should be a diary note from Jodl, volume 1, page 26: "The Fuehrer's question, not to touch on the Czech problem yet, is altered by the Czech deployment on the 21st of May which took place without any German threat and without even any apparent cause. Among its consequences, owing to the silence of Germany, this leads to a loss of prestige for the Fuehrer, which he is not now willing to accept. Hence the issue on May 5th of the new directive for the Case Green."

That is from Jodl's diary, page 26, first volume.

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THE WITNESS: Well, then, that was the information which I received, partly through General Keitel and partly through the former Major Schmundt, regarding the impression made on on the Fuehrer. The result was that he personally changed my draft on 20 May and put th e words at the beginning, "It is my unalterable decision that Czechoslovakia must be smashed within a short period of time. To decide upon the opportunity and the time is a matter for the political leaders."

DR. EXNER: These words appear in the document PS-388, which I have already referred to, which is USA 26, and I refer to the order of 30 May 1939.

BY DR. EXNER:

Q Please tell me briefly what the contents of these directives were.

A In that order of 30 May three cases had been quoted by the Fuehrer as to how a conflict with Czechoslovakia might arise. That is to say, politically and after a lengthy period of tension. Most undesirable, because there would be a lack of military supplies. The best solution would be if it happened after an incident, such as were happening nearly daily at that time, which would justify us morally and before the world if we decided to intervene.

Furthermore, there was the demand that on the first day the army should break through the forticications, thus making it possible for the armored divisions to go through and operate freely, and then, after four days, a situation should be created which would make the military position of Csechoslovakia untenable.

Q Why was the entire directive redrafted in June?

A The entire directive, instruction, C-175 was re-created in June. This was done, gowever, because on 1 October a new draft year began, the new calling-up period, and because the instructions C-175 were in any case only planned until 30 May 1938. So the old directive, which of course was still in force until 1 October, did neverthelessbecome invalid on 1 October through that directive which on 24 June, or 18 Juhe, had been drafted by me. In that directive the Case Gruen was once more mentioned in the sense of the Fuehrer's intention--namely, that it was the immediate aim of his policy that beginning with 1 October 1938--not on but beginning with 1 October 1938--any favorable

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opportunity was to be utilized to solve the Czechoslovakian problem, but only if France would not interfere or march.

I state that no different date existed for this and no order for the starting of a war against Czechoslovakia, but that with the directive of 30 May, the date was left open altogether, but the new instructions, C-175, of 18 June only stated that beginning with 1 October and on the first favorable occasion.

DR. EXNER: That is on page 29 of our document book, second paragraph: "I have decided, beginning on 1 October--" and so on and so forth.

A May I perhaps conclude this question by saying, in order to explain events quite precisely, that, in fact, before 14 September and as far as the military forces were concerned, nothing at all was done.

DR. EXNER: I once again refer to an entry in Jodl's diary. It is an extract from TS 1780, USA 72, and is the entry under 14 September 1938:

"At noon it is announced abroad that the general order for mobilization had been posted in Czechoslovakia...This, however, did not take place, although approximately eight age groups were called up with short term induction orders. Since the Sudeten-Germans are crossing the border en masse, we are requesting at around 1730 at the suggestion of the High Command of the Army, 2nd Department, the calling up of the Frontier Guard Service-- the G.A.D.--along the Czech border in the service commands VIII, IV, XIII, and XVII. The Fuehrer gives his authorization from Munich."

THE PRESIDENT: What was it that you were reading from then?

DR. EXNER: I have read from page 32 of my document book, volume I, page 32, first volume, and it is an excertpt from Jodl's diary of 14 September, which is in that critical period.

BY DR. EXNER:

Q Just what were these military measures which were being introduced?

A On 13 or 14 September, the eight age groups were called up in Czechoslovakia. Please notice that we used the increased border protection squads so that the many escaping Sudeten-Germans could be taken care of.

On 17 September the Fuehrer formed the Free Corps Henlein, against the

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previous agreement, again without telling us beforehand. Previously it had been agreed that these Sudeten-Germans were to join the Reserve Army.

Around about that time political discussion had already started. The first one at the Berghof had already started. Benes ordered mobilization in Czechoslovakia, and only beginning with that time and in accordance with political discussions, did the military action against Czechoslovakia commence.

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As far as I was concerned, there was no doubt that they were to serve the purpose in the event that Czechoslovakia would not submit to an agreement which we had made with the western powers, since the Fuehrer had clearly expressed that he would only act if France and England would not intervene politically or militarily.

Q. You made two more entries in your diary on the 22nd and 26th of September, which prove that you were worried at the time. These, incidentally, are in the first volume of my document book, on page 34, excerpts from PS-1780, dated 22 September:

"The Chief of the Foreign Department, Captain of the Navy Buerkner, reports that according to an intercepted long-distance telephone conversation between Prague and the loval Czech Legation Councillor the German Embassy in Prague was just about to be stormed. I am immediately initiating liaison by telephone and wireless with Prague through Colonel Juppe. At 1030 hours, Buerkner reports that the report has not been confirmed. The Foriegn Office has spoken with our Embassy.

"At 1035 hours I establish liaison with Prague and with Toussaint. To my question as to how he is getting along, he replied, 'Tanks; excellently.' The Commander-in-Chief of the Air Force who had been informed of the first report with the suggestion to think over what measures would have to be taken if the Fuehrer requests an immediate bombardment of Prague is informed through Counterintelligence about the false report which may have had the purpose of causing us to perform a military act."

Then, on the 26th of September, it says:

"It is important that because of false reports we do not permit outselves to be induced to perform military actions before Prague replies."

The Prosecution have stated that the 1st of October had long ago been decided on as the date for aggression. Will you tell me what significance that date, the 1st of October 1938 had for Operation Green?

A. I have already said that at the beginning. I have already explained that the new mobilization year had started, and that in no order was there a date fixed for the beginning of the campaign against Czechoslovakia.

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Q. Did you believe that the conflict might be localized?

A. I was certainly convinced of that, because I couldn't imagine that the Fuehrer would, in such a situation as the one we were in, start a conflict with France and Britain which would have had to lead to our immediate collapse.

Q. And the entries in your diary probably show your concern.

A. Yes. In my diary on the 8th of September there is mention of a conversation with General Stuelpnagel, and that contained the statement that Stuelpnagel was at the moment quite worried that the Fuehrer might depart from that basis which he had so often quoted, and might decide to allow himself to be dragged into military actions. There was the danger that France and Britain would become our opponents.

According to the entry in my diary, I replied to him that at the moment I was also worried about the same thing.

DR. EXNER: This is an entry which the Tribunal will find on page 26 of the first volume of my document book. Once again, it is an extract from PS-1780, and it is the entry of the 8th of September 1938.

BY DR. EXNER:

Q. You have already said, haven't you, what your worries were?

A. Yes. Well, it was out of the question that with five fighting divisions and seven reserve divisions we should have held western fortifications which were nothing other than a large building site, and that we should have held out against one hundred French divisions.

Q. On the 24th of August, in a letter addressed to Schmundt, you referred to the importance of an incident for the tasks of the armed forces in this Operation Green. You have been accused of that, and I want you to tell me what the significance of that statement is.

DR. EXNER: It is PS-388, and it is on page 35 of the third volume. It is an extract from the often-quoted Document PS-388. It is a report dealing with the time of the X Order, and the measures to be introduced in that connection.

BY DR. EXNER:

Q. Please, will you state what you intended when you prepared this work?

A. The Fuehrer's order of the 30th of May, which I have already explained,

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left no choice whatever. If such a case were to come about, then one would have to attack on a previously decided date. This could only happen on the basis of an incident, because without a cause, this wasn't possible, and after such a long period of extension, it wasn't to be.

The army, in order to bring off such a surprise break-through of the Czech fortifications, required four days of preparation. If nothing happened after those four days, then military preparations could no longer be kept secret, and the surprise did not come off. There was, therefore, no other possibility than either to have an instantaneous incident with Czechoslovakia, which would then, four days later, be the cause of military action, or that date had to be definitely decided on previously. In that case, and during those four days which the army required for its taking up of position, an incident had to happen.

The Fuehrer's demands, from the point of view of the General Staff, could, in fact, not be solved in any other way. This emergency was the cause of my letter, which was meant to explain the situation to the Fuehrer.

At that time, these incidents occurred every day. May I remind you that since the first partial mobilization in Czechoslovakia the Sudeten Germans, who were subject to being called up, had in the majority escaped the call-up. They escaped over the border into Germany, and the Czechoslovak border police shot at them. Daily the bullets made hits on the German side. All together, more than 200,000 Sudeten Germans crossed the border in that manner.

As far as that was concerned, the conception of an incident wasn't anything mean and criminal as I would describe it if, for instance, one considered such a thought with reference to peaceful Switzerland. If I said, therefore, how keenly interested we would have been in such an incident, then that was meant to express that if one took military action at all -- there are always such theoretical considerations, of course -- one might use just such an incident as the causus belli.

Q. And how do you explain that remark of yours about counter-intelligence not being ordered to handle this incident in any case?

That is on page 38 in the second paragraph, at the end of page 38. It is an extract from PS-388.

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A Yes, I was too much of an army expert on European military history not to know that the question of the first shot was not the deeper cause of the war, but the deeper cause of the war, in each war and on each side, played a more important part, but that the outbreak of the war is always attributed to the enemy is something which I think is not a typically German habit, but it was characteristic of all European nations who have ever been at war with one another. As far as the case of Zcechoslovakia is concerned, the deeper cause of the war was quite apparent. I need not describe this condition of three and a half million Germans who were supposed to be used to fight against their own people. I can only say that I watched the tragedy from the closest distance, in my own house. In this case, the deeper cause of the war, is, therefore, a fact, and Lord Runseran who was the attache from London, left no doubt about it whatsoever. In such a situation I would, of course, not have any moral qualms about extending one of these incidents, and by means of a counter action one might reply closely to the Checks, and as I said, extend such an incident, and provided the political situation allowed it, and England and France would not interfere, one might, therefore, in this connection find the obvious and visible reason for an action.

DR. EXNER: Gentlemen of the Tribunal, there is one point I want to draw your attention to. In my opinion, it is once more a mistake of the translation. I refer to the second and last paragraph on page 36. That is the report about the incident, the second and last paragraph on page 36 states in German "that the Operation Green may be set in motion as a result of an incident in Czecho Slavakia, which will give Germany the 'cause' for military intervention." The translation in English of these last words is a "provocation", should it be "cause" or "provocation"?

PRESIDENT: What are you saying? What is the alteration?

DR. EXNER: I believe that the translation is correct. I am not absolutely certain but I want to point out to the Tribunal I am referring to the word "cause", and "provocation" in the Englis.

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and it should be "cause" as far as we know.

THE PRESIDENT: Dr. Exner, there is no difference in the meaning of the words, whether it is provocation or whether it is cause.

DR. EXNER: It sounds a bit different, doesn't it? I just want to call your attention to it. In the German it is "cause" and not "provocation". Now the Prosecution are calling these considerations which we have just talked about criminal thoughts as to the supposedly planned murder of the German Ambassador in Prague. They planned that matter so as to have a cause for the marching into Czechoslavakia. What do you have to say to that?

A This, of course, is a different example from that which the Fuehrer used in his talks with Field Marshal Keitel, that the German Ambassador had been murdered by the people of Prague. That wasn't even known to me. General Keitel did not even tell me. I only read it here. Apart from that, I think it is useless to go on discussing it, but apart from that we did exactly the opposite way, we gave the order to General Toussaint to protect the German Ambassador in Prague and to protect the lives of it's inhabitants, because in fact at one stage it had been seriously threatened.

Q This is proved by Document AJ-9, 3rd volume of the document, page 200, and refers to the interrogatory of General Toussaint, who was a military attache in Prague at that time, the third question is as follows:

"Q Is it true or not that in the summer of 1938 you received the order to defend the German Embassy at Prague and to protect the lives of all the Germans in the Embassy?"

And his answer is:

"A. Yes, it is true. I remember this order was given to me by telephone probably in September, 1938" and so on and so forth, and then in question No. 4 -

THE PRESIDENT: The witness has already said once it was so.

DR. EXNER: Then I shall only refer to the testimony other than wherein it has been said that the incident had been stage

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by us. We need not go into that in detail.

BY DR. EXNER:

Q Did the incident really happen?

A No, neither was there a preparation for the incident, nor was it necessary. Incidents happened day after day, and the solution was a political one and quite an entirely different one at that.

Q So that this record of a report which we have read repeatedly, that remained purely theoretical, did it?

A It was a train of thought which wasn't really necessary at all.

Q Has that already been described?

A I don't know. At the time the political discussions started I naturally made efforts to achieve the fact that the provocation on the part of the Czechs were apparently desired, that they were not to be the cause of any military measures on our part.

Q Then at the end of September, did the significance of the pact at Munich, did they know we were militarily prepared?

A The statement which came from the Prosecution gave me the distinct impression as one and only one side out there in the autumn of 1938 at Munich, but that is quite out of the question. These people knew of the calling up of the age groups in Czechoslovakia in September. The whole world knew of the total mobilization on the 23rd of November. A political correspondent of "The Times" wrote on the 28th of September an article against this Czechoslovaki mobilization. Nobody was surprised, that we immediately, after the signatory in Munich, on the 1st of October, mobilized.

Q Is it true that in August, 1938, you prepared a new plan for action to be used against each area after the 7th of July, a new plan for action?

A Even before the signatory after the Munich pact, and o my own initiative I prepared a secret plan for all of the German borders. It was so prepared that the borders were to be closed off, and that the army was to be centralized in the center of Germany.

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That design was mentioned during my interrogation and it seems to have been available. It is now no longer contained in Document 388 P S, but it was that plan.

Q On page 40 of our document book, I again read an extract from PS 388. It states at the very end the following: "There must be the possibility of having a straight-out concentration and --- I have already also said it will be important that the air force will take care of and protect the German territory in this matter of newly acquired lands and that the power of the air force will remain at our disposal."

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It would have to be possible to put such a concentration into, separately, the various branches.

Why did you prepare this frontier protection position, what was the cause of that?

A The reason was that if the necessity for campaign against Czecho-Slovakia would be superfluous, then we had no plan for any campaign at all. And since no other intention of the Fuehrer was known to me, I made a plan for that particular campaign which could be applied to any possible cause; and I did that on my own initiative.

Q Did you know anything about the various intentions after the Munic agreement, to even go further and occupy Bohemia and Moravia?

A No, I hadn't any idea of that. I know his speech of the 26th of September or August. Ithink it was September.

Q All right. Let us assume it was September.

A In any case I should state that now the last problem is facing us which must be solved.

I believed in that assurance, and this is proved by the fact that during these days of on or about the 10th or 11th of September I suggested to Field Marshal Keitel that he should ask the British troop to come to Iglau in Moravia, because there were Germans who were living there who had been threatened by Armed Czecho-Slovakian Communists. This of course was a suggestion which I would never have made had I any idea that the Fuehrer had any other intentions regarding attacking Moravia.

Q These further intentions of the Fuehrer were mentioned on the 20th of October '38. Did you still experience that in the OKW?

A No, I didn't. I didn't see it. I only saw it here in this cour room; that is to say, rather, during my preliminary interrogations.

Q Now, you were being transferred to Vienna, and as what?

A As Artillery Commander of the 44th division stationed there.

Q That was the end of October, wasn't it?

A Right.

Q Then how did you imagine everything military? Although of cours you have already answered that.

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A I had been expecting a period of political relief and peace. I can certainly say peace.

Q And your personal fate, how did that work out?

A Just because I knew of no other plan, I transferred my home to Vienna. I moved to Vienna with my furniture; something I would never have done if I had had as much as any imagination of a pending war. Because I knew that in the event of a war it had been planned that I should become the chief of the leader staff of the armed forces which would have meant my return to Berlin. I asked General Keitel that he should assist my to become the commander of the 4th Mountain Division in Reichenhall on the 1st of October '39, a request which again I would not have thought of if I had guessed the things which were coming to us.

Q Did you remain in Vienna as the commander of Artillery, and when you were there did you have contact with the OKW?

A No, none at all. I had no connections with the OKW. I didn't receive any military documents from the OKW during all that period.

Q And who informed you about the position at that time?

A Nobody. During that time I knew nothing about what was going on or what was intended, no more than every lieutenant in my artillery.

Q Did you have private exchange of letters with them?

A I received one letter from General Keitel. It was I think at the end of July 1939. He personally gave me the happy news that quite probably I would become the commander of the 4th Mountain Division in Holland on the 1st of October and that as the chief of the armed forces command staff now staffed for peace there would be General von Zodenstern, on the 1st of October.

Q Did you participate in the plan regarding the occupation of the remaining part of Czecho-Slovakia?

A No, I did not participate. First of all, as this occupation went on I remained in Vienna and afterwards temprarily I occupied the position of Chief of Staff of the 8th Army Corps at Vienna. On the other hand, later on, together withthe entire 44th Division I was transferred to Bruenn in Czecho-Slovakia.

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Q When did you hear about the whole thing?

A That action in March, March of 1939. It was then through order of my divisional staff that I heard of it two or three days previously.

Q This move into Czecho-Slovakia, was it the carrying out of that plan which you had originally drafted, the plan "Green?"

A No. It had nothing whatever to do with that any more. There were completely different units, for instance. Not even half of the troops were there which marched into Czecho-Slovakia in 1939 in comparison to those that had been planned for in 1938.

Q Now, during that period when you were in Vienna on the 23rd of May 1939 you had a conference or there was a conference with the Fuehrer which has often been quoted here regarding the disregard of clarity, and all that sort of thing. There it says repeatedly that Warlimont was supposed to be present as your representative. What is the situation there, was he your representative?

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A With tremendous tenacity it is beginning to get at it that General Warlimont took part in the conference, who was the representative or even close assistant of Jodl. There is no question of that. He was my successor but not my representative. And if you repeat that again and again, it still does not come true. He was my successor.

Q You had left the OKW, hadn't you?

A Yes, I had completely left the OKW. The fact that quite accidentally Warlimont became my representative, my deputy, that has nothing whatever to do with the facts of May 1939.

Q When did you hear of this meeting for the first time, in May 1939?

A I remember it now for the first time in this trial, 1946.

Q Did you have any contact with party leaders at that time, or party Socialists?

A No, not in the least at that time; nobody.

Q Or with these defendants here?

A No. Not either.

Q During that time the Fuehrer, together with Keitel went to Vienna once. I think they were there two days. Did you have to report to him on that occasion?

A Yes, coming from Prague and quite unobtrusively he visited Vienna, and on that occasion I spoke to Keitel, General Keitel, for a brief period, but not to the Fuehrer.

Q You weren't presented to him?

A No.

Q What about your war service regulations?

A As I have already said, in the event of a war I was to become the head of the Army leader staff.

Q What about your private personal plans for that summer?

A During that summer I already had shipping charts so as to make a journey into the eastern Mediterranean.

Q On the 23rd of September 1931?

A Yes, on the 23rd of September the journey was to start at Hamburg, and I had even paid for the tickets.

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Q When did you buy the ticket, by the way?

A I think I bought it during the second half of July.

Q Then when did you return to Berlin?

A I am not absolutely certain about the exact date but I expect that it was on the 23rd or 24th of September -- I mean August, of course, Because of a telegram which surprised me, on Bruenn.

Q Well, if you hadn't received that telegram, when would you have had to go to Berlin in that case?

A In the case of general mobilization I would have had to go to Berlin in any case.

Q And did you now have to report to the Fuehrer in Berlin?

A No, and I didn't report to him, either. I only reported, of course, to General Keitel and to the chiefs of the General Staff of the Army, the Air Force, and the Naval Command.

DR. EXNER: Mr. President, I have now completed that subject and I thought that this would be a convenient time to adjourn.

THE PRESIDENT: Can you tell us how long you are likely to be?

DR. EXNER: I very much hope, certainly it will be in the course of tomorrow morning, but shall we say after lunch-time?

DR. STEINBAUER: Mr. President, as Counsel for Dr. Seyss-Inquart, I have to submit the request from my client to you for him to have permission to be absent from the session for two days, to prepare his defense.

THE PRESIDENT: Certainly.

(The Tribunal adjourned until 5 June 1946, at 1000 hours).